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MICHIGAN,

NISI PRIUS CASES,

DECIDED BY THE STATE AND FEDERAL COURTS IN MICHIGAN.

TO WHICH ARE ADDED

BRIEF BIOGRAPHICAL SKETCHES OF THE JUDGES OF MICHIGAN, PAST AND PRESENT,

LAW ANECDOTES AND REMINISCENCES.

ALSO

LAW MISCELLANIES.

EDITED AND COMPILED BY

CHARLES B. HOWELL, LL.B.,

OF THE DETROIT BAR.

DETROIT:
RICHMOND, BACKUS & CO.
1884.

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PREFACE.

The number of pages involved in the plan of this work having already been exceeded, I will make the preface brief, although I would be glad to here give expression to many opinions in connection with Nisi Prius tribunals.

I purposed to make the book substantially a report of practice cases decided at Nisi Prius and not carried to the Supreme Court. I have not quite fully carried out that plan, as the forensic efforts of eminent counsel take up much more space than I had counted on. Yet I could not abbreviate these and retain their symmetry.

The biographies of judges are brief, but as full as the space permits, and I think they will be read with interest by the bar and by many others interested in the judiciary of our great Commonwealth. Many of these sketches would have been more complete had those acquainted with the needed facts responded to my request for information.

The anecdotes and reminiscences are confined to two counties for lack of space to include the hundreds of pages left out. But those published are written by one who, while not a member of the bar, seems to be a close and clear observer of the doings of courts and lawyers. I do not agree with him that the old times gave the bar greater orators than do these. I think the difference is more seeming than real. Before the days of railroads and telegraphs and other modern wonders, including

cheap dailies that fly to almost every man's door, the orator was the medium through whom the world gained a thousand and one items of interest now gleaned from books and papers, and was appreciated as he is not now. Again, orators may now be found in one place, and at a later period in another. I doubt if the orations of the old-time lawyers excelled some at least of the arguments to juries found in this volume.

For lack of space I have left out of the book at least double the amount of matter found in the book. Perhaps my selections from the mass of material on hand may not in all cases have been wise. But I have done the best I could while engaged in active professional duties, and in other literary work.

I have received valuable aid and counsel in the preparation of this volume from many professional brethren, and not a few laymen. To mention a few would be invidious, and the list is too long for this preface; I heartily thank them one and all. I have also consulted several Legislative Manuals, the Red Book of Michigan, the Michigan Reports, Farmer's History of Detroit and Michigan, and many other sources of information. For the list of County Judges I am indebted to Lew. M. Miller, of the Department of State, Lansing.

Since writing the introduction to Mr. Whitman's argument, on page 207, I have seen the record in the case of People v. Lyons, and find that it does show that witnesses were examined in support of Mrs. Lewis. I make this correction in justice to Mr. Whitman.

C. B. H.

DETROIT, Aug., 1884.

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MICHIGAN

NISI PRIUS CASES.

PART I.

Superior Court of Detroit.

WILLIAM T. HURD

VS.

HORATIO R. STONE,
Principal Defendant,

AND THE

AMERICAN NATIONAL BANK OF DETROIT,
Garnishee Defendant.

Garnishment.

When Writ may issue in Suits commenced by Narr.

Motion to quash writ of garnishment.

Declaration filed and Rule entered Dec. 7, 1881. Affidavit in garnishment filed and writ issued Dec. 8, 1881.

Declaration served on principal defendant Dec. 9th, at 7.15 o'clock a. m.

Writ of garnishment served Dec. 9th, at 8.45 o'clock a. m.

Motion to quash writ for the reason that the writ of garnishment was issued before the commencement of the principal action, and for other reasons not taken into consideration in giving the opinion. Session laws 1881, p. 1.

Decided January 22, 1882.

THE COURT, CHIPMAN, J., denied the motion, and held that filing the affidavit and issuing the writ of garnishment at the time of filing the declaration and entering the rule to plead, was a compliance with the statute. The Court based its opinion upon the universal practice in the profession, rather than upon the strict construction of the statute, but did not intimate that a strict construction of the statute would have caused it to hold the other way.

Wm. H. Wells for the motion.
Lillibridge & Latham against.

Superior Court of Detroit.

MILLIE CATES

vs.

THOMAS A. PARKER.

Landlord and Tenant.

Where different tenants of a building use a clothes reel in common, the landlord is liable for injuries sustained by a tenant who falls through a defective platform on which the clothes reel rests, without any fault on the part of the tenant.

Action on the case.

Defendant demurred to the plaintiff's declaration.

Defendant owned a building on Jefferson avenue, Detroit. The ground floor was occupied as a store. Rooms on the three upper floors were rented to different roomers. Plaintiff and her husband rented rooms on the second floor.

In the rear yard a post was erected near the building. A platform attached to the building extended out to the post. A clothes reel was built on this for drying clothes; all the roomers of the upper floors had the privilege of drying clothes on this reel; and to go out of the second floor rear door upon the platform to stand upon it in using the clothes reel. No covenant to put in repair or keep in repair was made with plaintiff or any tenant. Nothing was said, except "all the tenants have use of all the conveniences belonging to the building" (including coal sheds, closets, etc.) This was said by defendant or his agent when the renting was done. The lease was verbal, a renting from month to month.

The declaration in the case recited these facts, and also that while plaintiff was using the reel with care, etc., the reel gave way and fell, precipitating her to the ground below, injuring her severely.

Defendant demurred to the declaration on the ground that it did not disclose any cause of action. That a landlord who did not covenant to keep in repair was under no obligation to do so.

The general rule was admitted by plaintiff, but her

counsel claimed that a tenement house was an exception to the rule. That all the tenants had equal right to use the reel, which was a part of the premises. That therefore *that* part of the premises was let in common, and that no one tenant was obliged to look to its safety. No joint leasing in common was made. It stood on the same footing as an elevator in a building; all tenants had exclusive right to their several rooms, but a right to use the elevator, etc., in common, and the duty to keep in repair was on the landlord.

THE COURT, CHIPMAN J., overruled the demurrer on this ground, and this was the only point in the case.

On the trial the plaintiff and defendant offered their respective proofs. Not a single exception was taken during the trial, and the only request to charge was that the plaintiff had made out no case, on the ground above referred to. This request was refused. The whole point in the case was therefore as described.

Verdict for the plaintiff for $2,500.

Defendant afterward paid plaintiff $2,000 and costs rather than take his chance of reversing the judgment in the Supreme Court.

Daniel E. Prescott for plaintiff.

Geo. V. N. Lothrop, Chas. B. Lothrop and *S. M. Cutcheon* for defendant.

The Superior Court of Detroit, in Equity.

THEODORE SCHUNEMAN

VS.

EDWARD BURK ET. AL.

Trade Mark—Fraud.

To constitute an infringement a trade-mark must upon its face be calculated to mislead purchasers as to who is the real manufacturer or proprietor of the goods sold under it.

The question of intent of no consequence where there is no act of fraud.

Bill to enjoin defendants from using an alleged trade-mark claimed and used by complainant.

Heard on pleadings and proofs, and decided at June term, 1879.

OPINION OF CHIPMAN, J.—I do not deem it necessary to determine all the points presented in the argument of the case. I am of the opinion that there are several grounds on which the complainant ought to fail in the relief sought here. The trade-marks of the respective parties, as made exhibits in the case, are decisive. The authorities hold that one trade-mark to constitute an infringement of another must upon its face be calculated to mislead purchasers as to who is the real manufacturer or proprietor of the goods sold under it, and so interfere with the just profits of the rightful owner.

The exhibits are before me. They cannot be confounded, one for the other, even on casual inspection. In shape, colors, borders, devices, lettering and name of

manufacturer, they are essentially distinct. The only thing they have in common are the words " Commercial Traveler," which, in defendants' label, are prefixed with the abbreviation " Mich.," printed in the same semi-circle in the same sized plain letters as the remainder of the name.

While an intention not to deceive would not avail the defendant, if his label actually did deceive, no fraudulent intent can cover an act which cannot and does not defraud. The question of intent is therefore of no consequence here, because intent without an act is not recognized in the law.

*Millington vs. Fox, 3 Myl. & Cr., 338.
Coffeen vs. Brunton, 4 McLean, 516.
Crawshay vs. Thompson, 4 Man. & Gr., 557.
Upton on Trade Marks, 204.

The act to be found here must be so close an imitation of complainant's label as to induce purchasers to believe that defendants' label covers complainant's cigars. I do not find this act in the case.

The bill must be dismissed.

George Gartner and *George H. Lothrop* for complainant.

John W. McGrath and *Ashley Pond* for defendant.

*In Millington vs. Fox, defendant, while perpetually enjoined, was relieved of payment of costs because of a lack of intent on his part to defraud complainant.

Bay Circuit.

DOUGLAS F. SMITH

vs.

THE BAY CITY TRIBUNE COMPANY.

Security for Costs.

No one who brings a suit in good faith should be sent out of court because unable to furnish security for costs.

Trespass on the case for libel.

Motion for security for costs.

This was an application for an order requiring plaintiff to file security for costs, based upon an affidavit of merits, and a showing that, after a careful search of the records, etc., it appeared that plaintiff had no property subject to execution.

THE COURT, GREEN, J., held that unless a suit is brought in bad faith, security for costs will not be required simply because the plaintiff has no property, citing Lord Eldon's doctrine that no man should be denied justice because he is poor.

Motion denied without costs.

Decided September, 1879.

Hatch & Cooley for the motion.

Luther Beckwith contra.

Manistee Circuit.

EUGENE E. DONVILLE,
GEORGE R. GEISMAN,
Plaintiffs in Certiorari,

vs.

JAMES H. RUSSELL,
Defendant in Certiorari.

Jury in Justice Court.

A Court cannot hold interviews with the jury after they have retired to make up their verdict, except by consent or in the presence of the parties.

This cause was tried in Justice's Court. While the jury were deliberating upon their verdict, they sent the officer in charge for the justice, for the purpose of asking him some questions. The justice went to their room, in the absence of the parties and their counsel, and without their consent in any way given. On the entrance into said room by the justice, one of the jurors asked the justice "If costs of suit followed the judgment?" The justice answered, "Yes." Thereupon one of the jurors replied, "We had agreed, but now we don't." The justice then left the jury room.

Shortly after this interview, the justice was again sent for, and he again went into the jury room. One of the jurors then asked him, "If both parties were entitled to appeal from the verdict?" The justice replied, "Yes." The jury immediately rendered a verdict for defendant. The plaintiff then brought the case to this court by certiorari, claiming that it was error for the justice to hold such communications with the jury in the absence of the parties or their counsel, or without their consent.

THE COURT, JUDKINS J., reversed the judgment, and based his decision on the following, among other authorities:

Thompson's Charging Jury, page 26.
Bunn vs. Croul, 10 John., 238.
Kirk vs. Ohio, 14 Ohio, 511. *

Nelson & Gray for plaintiffs.
A. J. Dovell for defendant.

Bay Circuit.

ROLAND WESTON

vs.

GEORGE L. VON WALTHEUSEN.

Security for Costs.

Actions for false imprisonment not being favored by law, insolvent plaintiffs may be required to give security for costs.

Trespass on the case for malicious prosecution and false imprisonment.

The application for security for costs is based upon an affidavit of merits and a showing that plaintiff had no property subject to execution.

Plaintiff cited and relied on the ruling in Smith vs. The Tribune Co., and the Court held:

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* Where a justice went into a jury room alone and answered a question upon a certain point, and afterwards in the same case, in presence of the parties and by their consent, answered a like question from the jury room, it was held not to be error.—*Galloway* v. *Corbett, Mich. Sup. Ct., Jan. Term*, 1884.

That this being an action not favored in law, plaintiff should be required to file security for costs.

Motion granted, without costs, December, 1882.*

T. A. E. Weadock for plaintiff.
A. McDonell contra.

Superior Court of Grand Rapids.

JOSEPH BAUDRIG

vs.

WITHAM W. POWERS,
DAN. CHAPPELL.

Revivor—Administrator.

Where one of two or more defendants dies the suit cannot be revived against the administrator of the deceased defendant.

This was an action of trover against two defendants. While the suit was pending one of the defendants died, and an attempt was made to revive as against the administrators.

Motion to dismiss the proceedings against the administrators.

THE COURT, PARRISH J., held that when an action is brought against two or more defendants and one dies, the suit cannot be revived against the administrator of such deceased defendant; that the case must proceed, if

* Security was filed, and plaintiff recovered a verdict of $275. A new trial was granted. See Ross vs. Jaques, 8 M. and W., 135; Armitage vs. Grafton, 1 Bail Court Report, 80.

at all, against the surviving defendants. The proceedings to revive are entirely statutory, and are not authorized in such cases. 2 C. L., 5824, page 1686.

Decided March, 1883.

Sliter & Rogers for plaintiffs.
Taggert, Stone & Earle for defendants.

Kent Circuit.

JACOB BARTH

vs.

LIPPMAN MARCUSE.

Motion, and not Plea, the proper Remedy in Practice.

Demurrer to plea in abatement.

Defendant pleaded in abatement that he was not a resident of Kent County, but was decoyed within it by trick and fraud, for the purpose of enabling the officer to serve the summons upon him.

Plaintiff demurred.

Decision rendered November 21, 1881.

THE COURT, HOYT J., sustained the demurrer, and held that a motion to quash was the proper remedy, and the defect in the summons, if any, could not be taken advantage of by plea in abatement.

Jones vs. Nelson, 51 Ala., 471.
Burrill's Practice, 107.

The practice of this Court is not a matter of plea.

1 Chitty's Pleadings, 502, 523.
Nichols vs. Nichols, 9 Wend., 263.
Paul vs. Graves, 5 Wend., 96.

No cases are found in the books where writs and the service thereof, have been set aside in any other way than by motion. This is settled practice.

Baker vs. Wales, 45 How. Prac., 137.
Carpenter vs. Spooner, 2 Sanf., 717.

Taggert, Stone & Earle for plaintiff.
Simonds, Fletcher & Wolf for defendant.

Wayne Circuit.

EDWARD WELSH

vs.

PETER E. McKERRAL,

Capias ad res.—Contract.

A Writ of Capias will be quashed on motion where the cause of action is one based upon contract, and not upon tort.

Motion to quash writ.

The writ was issued March 5, 1883, under 2 C. L., sec. 5736, p. 1666; quashed April 24, 1883.

The motion to quash was based upon the following, among other grounds:

Because the facts set forth in the affidavit upon which the writ is issued show that the plaintiff's claim is based upon a contract.

The following is the affidavit upon which the writ was issued:

STATE OF MICHIGAN, } ss.
WAYNE COUNTY, }

Edward Welsh, being duly sworn, says:

That on or about the 28th day of November, 1881, at Detroit, deponent had a conversation with one Peter E. McKerral: that said McKerral knew at the time that deponent was a dealer in wood in Detroit, and that deponent desired to procure wood for his retail trade in said city during the winter they were then entering upon: said McKerral said he could furnish to deponent, and would furnish to him, quantities of beech and maple, for deponent's said trade: he agreed to deliver said wood at Detroit in said county, and to commence said delivery at once and keep the same up according to the usual course of business: that the usual course of business would call for about fifty cords a week: he wanted deponent to accept a draft for three hundred dollars as an advance on said wood: deponent declined to do this for a long time, but finally agreed to do so in consideration of the positive and repeated assurance given him by said McKerral that said wood should be delivered promptly, and enough of it to cover said draft accepted. That after said date and about December, 1881, deponent accepted a draft from said McKerral of which a copy is hereto attached, and paid said draft in full, to wit, three hundred dollars, when the same became due: that the signature to said draft is that of said McKerral: that said acceptance and said payment of said draft were made in reliance upon said assurance of said McKerral that he had said wood, and would furnish the same as afore said:

That said McKerral to this date has furnished no wood to deponent, and has given him nothing for his said three hundred dollars: that he has not communicated with deponent since early in the winter of 1881-2: that during the said winter and during the summer of 1882 said McKerral resided at Chatham, Ont., from whence he was to ship said wood: that in the spring of 1882 said McKerral sold about fifty cords of wood to other parties, and which has been delivered in Detroit.

That during the past six weeks said McKerral has been in Detroit, stopping a part, if not all the time, at Rice's hotel: that deponent has tried to see him at said hotel, but said McKerral avoided him and declined to see deponent.

And deponent further saith that upon the aforesaid facts he has

a good cause of action against said Peter E. McKerral for the said sum of three hundred dollars, as he verily believes.

EDWARD WELSH.

Subscribed and sworn to before me, this 5th day of March, 1883.

JOHN D. CANFIELD,
Notary Public,
Wayne County, Mich.

THE COURT, CHAMBERS J., quashed the writ, holding that the affidavit disclosed a cause of action based upon contract.

The People ex rel. The Singer Manufacturing Co. vs. McAllister, 19 Mich., 215.

Theo. S. Trombly, attorney for plaintiff.
Atkinson & Atkinson, of counsel.
M. E. Dowling for defendant.

Wayne Circuit—In Chancery.

BRIDGET H. DROLET

VS.

PETER DROLET.

Divorce—Writ of Ne Exeat.

In general the writ of ne exeat will not be granted, unless in case of equitable debts or claims. The debt must exist at the time, or must be so far matured that present payment can rightfully be demanded. A claim for temporary alimony, before it is passed upon, is not such a debt or claim as can be made the foundation for the granting of such writ.

OPINION BY JENNISON, J.—A bill for divorce was filed by the complainant; also a petition for temporary ali-

mony, yet to be heard. The bill alleges that complainant's husband "has given out that in case proceedings for a divorce are commenced against him he will speedily leave this State and go to Canada, and will thus endeavour to avoid the payment of alimony."

This is the first time that such a writ has been asked for in this circuit for such a purpose. The averments in the bill are insufficient to confer jurisdiction. The existence of a debt should be positively stated, except in matters of account. (1 Barb. Ch. Pr., p. 648, old ed.; Beames on Ne Exeat, p. 28.) There should also be a positive averment of the defendant's intention to go abroad, or of his threats or declarations so to do. (1 Barb. Ch. Pr., old ed., 649, 650; Beames 33, 34; 2 Dan. Ch. Pr. 1707.)

But as the application may be renewed, the subject matter will be noticed more at length.

There are no statutes in this State regulating the issue of these writs; and until the recent case of Bailey vs. Cadwell, decided at the July term of the Supreme Court, it was considered doubtful by the profession whether, under article 4, section 33 of the Constitution prohibiting imprisonment for debt, and section 7174 of the compiled laws forbidding arrest on execution issuing out of a court of equity for the recovery of money due on decree, writs of *ne exeat* could issue in this State. In that case, the court say that under section 5057 of the compiled laws the jurisdiction of the English Court of Chancery, subject to constitutional limitations, is the measure of the authority of our courts. The record showed that a writ was allowed by a Circuit Court Commissioner, and the suit was brought on a *ne exeat* bond given by defendant. The court held that the Commis-

sioner had no power to issue the writ and that the bond was void.

In general the writ will not be granted unless in case of equitable debts and claims. The debt must exist at the time, or be so far matured that present payment can rightfully be demanded.

The English courts have carefully limited the jurisdiction to where the default of the defendant was capable of direct measurement, and not where there was a mere probability of a future indebtedness, or of a future default on an unmatured indebtedness. (2 Story Eq. Jur., ff. 1470, 1474; Beames, p. 30; 2 Dan. Ch. Pr., p. 1702, ch. 38, 4th ed.; Bailey vs. Caldwell, supra.)

Under the English practice there were two exceptions, one in a bill for account, where there is an admitted balance, and the other in case of alimony decreed to the wife where the husband threatens to leave the realm—the reason in the latter case that the Ecclesiastical Courts who had jurisdiction in divorce cases had no adequate means to enforce such payments. (2 Story Eq. Jur., ff. 1471, 1472; Cooper's Eq. Pl., 149.)

The English courts hold that the writ will not be allowed in cases of permanent alimony decreed except for arrears due and unpaid. (14 Vesey, 261.) And it seems the writ will not be granted in cases of temporary alimony. (1 Term. R., 322; 2 Story Eq. Jur., f. 1472.)

For cases showing under what circumstances this writ will be granted in different States see Smith Ch. Pr. 2 Am. ed., p. 577 note 2 Story Eq. Jur., ff. 1465-1475; as to form of order, see 2 Seton on Decrees, 859.

I am therefore of the opinion that a writ of *ne exeat* is not authorized in this State in cases of temporary alimony.

Writ denied.

Brennan and Donnelly for complainant.

Defendant did not appear or answer.

Wayne Circuit.

CHARLOTTE HASKINS

vs.

GEORGE MOORE.

Trial upon Affidavits.

As a general rule, no matters can properly be tried upon mere affidavit, except such as depend upon the discretion of the Court.

BY THE COURT, JENNISON, J.—Mrs. Haskins obtained a verdict of $327 and costs in a slander suit. A few days thereafter parties tried to negotiate a compromise. The result was that a man by the name of Smithson took plaintiff to the house of defendant, where, after some discussion, a discharge in full of the verdict, in consideration of $50, was read to her and signed by her. The money was paid to Smithson with plaintiff's consent, but it appears that he appropriated it to his own use. Judgment was afterwards entered on verdict, with leave to move to have it set aside. Mr. Palmer made the motion for satisfaction of judgment, based on affidavits. Judge Reilly filed counter affidavits, denying the facts charged.

On this showing, *Held*, that plaintiff had a right established by law, to wit, a judgment, and that before

that right could be assailed plaintiff was entitled to have an issue framed and to defend herself by examination of witnesses in due course of law.

Generally, no matter can be tried upon mere affidavit, except such as depends upon the discretion of the Court.

People Ex Rel. Judge of Calhoun Circuit, 24 Mich, 408.

Motion denied without costs.

Ex-Judge C. J. Reilly for plaintiff.

E. Minock and E. Palmer for defendant.

Wayne Circuit—In Chancery.

SUSAN CHAPMAN

vs.

JOHN L. CHAPMAN.

Bills of Review—Fraud.

Bills of review seek to review or re-examine causes upon their merits. A bill which, upon extrinsic facts, aims to vacate a decree, is not a bill of review.

June Term, 1883.

The bill in this case was filed for the purpose of obtaining the vacation of a decree obtained by this defendant against this complainant, on the ground that the subpœna was fraudulently served, it being so served as to leave her in ignorance of the pendency of the suit.

The defendant herein moves to dismiss the bill on the ground that leave of the Court was not first obtained, as required by Chancery rule No. 101, it being claimed that the present bill is one in the nature of a bill of review.

THE COURT, SPEED, J., *Held*, that bills of review seek to review or re-examine causes upon their merits.

The present bill does not raise the question as to the merits of the former cause, but aims upon extrinsic facts to vacate the decree.

Although bills in the nature of bills of review, impeaching decrees for fraud, are sometimes inaptly called original bills in the nature of bills of review, (Story's Eq. Pleading Sec. 426) I am satisfied that the bills referred to in rule 101 are such only as may technically be styled Bills of Review, or bills in the nature of Bills of Review.

The motion is denied, with ten dollars costs.

S. W. Burroughs for the motion.

Ward and Palmer against.

Tuscola Circuit.

LEOPOLD NEWBAUER ET AL

VS.

JAMES H. CUMMINGS.

Clerk of Court—Amending Writ.

A writ is not void though signed by the clerk of the court at another place in the county than the county seat. Where defendant's name appears in a writ as the party defendant, but is omitted in the portion commanding the officer to summon defendant, in such case the omission is an irregularity that may be cured by amendment to the writ.

Motion to quash writ of replevin:—For the reason that the writ was not issued at the county seat (Caro), but was signed by a deputy clerk at the village of Vassar.

Also, for the further reason that the name of defendant was omitted from the command to summon.

The name was correctly stated in the writ, as the the party defendant to whom security should be given, but in the command to summon no name was inserted in the blank for that purpose.

Decided May 14, 1880.

THE COURT, WIXON, J., denied the motion, holding that the writ being otherwise properly issued, was not void, though signed by a deputy clerk not at the county seat, but at another place within the county. The omission of the defendant's name from that part of the writ containing the command to summon, is a mere irregularity, and the writ may be amended so as to correspond with the name in the recital as to giving security.

Kimball & Austin Mnfg. Co. vs. Vroman, 35 Mich., 310, and cases cited.
Barber vs. Smith, 41 Mich., 138.

B. W. Huston and *F. L. Fales* for the motion.
Taylor and *McKay* and *C. P. Black* contra.

United States Circuit Court—Eastern District of Michigan, In Equity.

SILAS FARMER

vs.

THE CALVERT LITHOGRAPHING, ENGRAVING AND MAP PUBLISHING COMPANY.

Decided April 11, 1872.

Copyright—Injunction.

On motion to dissolve injunction, complainant cannot by affidavits rebut the averments in the defendant's answer relative to complainant's title.

It is not now, as it was formerly, necessary for complainant to first obtain the verdict of a jury in his favor touching alleged infringement of copyright. Both the right and the infringement may be adjudicated in a Court of Equity.

Equity will not compel a discovery by a defendant when his course will subject him to forfeitures or penalties, unless such forfeitures are raised by the bill; *provided* the defendant objects by demurrer, or declines in his answer to make such discovery on this ground.

Denials merely on information and belief in an answer are not sufficient to entitle defendant to a dissolution of an injunction.

Pleadings in equity should be pointed and concise.

The time at which a book is published is not necessarily the time at which it is printed, but the time is optional with the publishers.

The compiler of a work may use preceding works upon the subject, where he bestows such mental labor upon what he has taken as to *produce an original result.*

Boundaries of townships are legitimate subjects of copyright where labor and research are required to ascertain the correct information.

LONGYEAR, J. This is a motion to dissolve a preliminary injunction issued upon a bill filed to restrain the defendant from an alleged infringement of copyrights in certain maps of the States of Michigan and Wisconsin, and for an account of profit, etc.; is made on the coming in of the answer, and is founded upon the answer and an accompanying affidavit.

The points made upon the argument, and so much of the bill, answer and affidavits as are necessary to be stated, appear in the opinion of the court.

On the hearing of the motion complainant's counsel offered to read affidavits for the purpose of rebutting certain averments of the answer as to complainant's title. Defendant's counsel objected.

The question of the reception of affidavits on motion for, or to dissolve, an injunction in copyright cases, for the purpose of rebutting averments in the answer as to complainant's title, has undergone much discussion in the courts. In England it seems to be well settled that such affidavits will not be received, the complainant being left to depend upon the affidavits filed with his bill so far as the question of title is concerned—Norway vs. Rowe, 14 Ves. Jr., 144, 151, 156, and cases there cited; Platt vs. Button, ib. 447. In the United States, although a practice seems to have grown up in some localities to receive such affidavits, yet whenever the question has been raised and adjudicated the decisions of the courts, with scarcely an exception, seem to have been quite to the contrary, and in conformity with the English practice.

Counsel referred the court to numerous authorities on the question of allowing complainant to read affidavits in rebuttal of the answer in injunction cases generally (see cases cited in Hilliard on Injunctions, at page 107), but they failed to refer the court to any authority or adjudicated case upon this particular question of allowing such affidavits to be read after answer, *in support of complainant's title*, with perhaps the single exception of the case of Poor vs. Carleton, (3 Sum. 70) which upon the face of it appears to be exceptional. With the limited time I have had to spare amidst the discharge of other duties, I have been able to find but few decisions in this country upon the point.

Justice GRIER, in 1850, in a patent case, (Parker vs. Sears, 1 Fisher's Pat. Cases, 94) held that the United States Circuit courts were bound to follow the settled rules of practice of the English courts of equity in this respect, (there being no written rule of court to the contrary) and refused to allow such affidavits to be read. In 1868, in another case, (Goodyear vs. Mullee, 3 Fisher's Pat. Cases, 420) the same learned Judge allowed affidavits by way of rebuttal to be read, but they in no manner related to the question of title.

In the case of The United States vs. Parrott, *et al.*, (1 McAllister, 271, 275, 6) the United States Circuit Court for California, MCALLISTER, J., after an able review and full consideration of the authorities, English and American, including the case of Poor vs. Carleton, (ante) held that affidavits as to the title after answer could not be read on a motion for injunction to stay waste.

In Brooks *et al.* vs. Bicknell *et al.*, (3 McLean, 250,-255,) Mr. Justice McLEAN quotes approvingly the language of the court in Morphet vs. Jones, (19 Ves. 350,) where it is said, "There are many cases of injunction where you may reply to the answer by affidavits, not on the question of title, but on mere facts, as in the instance of waste. On such questions of fact, though not on the title, affidavits in reply to the answer may be read." The learned Judge then quotes from 1 Smith's Ch. Pr., where it is said, "If the plaintiff, instead of applying for the injunction upon affidavit, waits until the defendant has answered, he must rest his case upon the disclosures made by the answer, and he is not entitled, either for the purpose of obtaining or continuing an injunction, to read affidavits in support of his motion in opposition to the answer," and says, "But cases of waste, or of mischief analagous to waste, are an exception to this rule *where the affidavits do not refer to title.*" That was a patent case, and as the affidavits did not refer to title, they were allowed to be read.

The current of authority seems to be all one way, and opposed to the reception of the affidavits. So far, therefore, as the affidavits offered refer to complainant's title, they must be rejected. They are received, however, and will be used so far as they bear upon the question of infringement. The motion to dissolve the injunction must, therefore, be decided upon the answer and accompanying affidavit, so far as questions relating to complainant's title are concerned.

There is a demurrer, by way of answer, to the bill as an injunction bill, which must be first disposed of.

It is claimed that complainant is not entitled to an injunction for the reason that it does not appear by the bill that he has settled his right at law, and obtained the verdict of a jury in his favor touching the alleged infringement. Such, no doubt, was formerly the law, and now, in some cases, the court will, no doubt, require that to be done. But it is now well settled that both the right and the infringement may be set up and adjudicated in a court of equity without having been first determined at law. Phillips on Patents, chapters 20 to 24; Hill on Inj., 391, 2; 2 Sto. Eq., pages 246 to 248; Stevens vs. Gladding, 17 How., 447; Motte vs. Bennett, 3 Fish. Pat. Cas. 642; Ogle vs. Ege, 4 Wash. C. C. 584.

Another ground of demurrer is that the bill does not waive the forfeiture of the printed copies of defendant's map, and the penalty of one dollar for each copy, as provided by statute in such cases, but on the contrary prays that such forfeiture and penalty may be inflicted in addition to the relief by injunction and an accounting for profits. The proposition here is, that equity will not grant its assistance by way of injunction and an accounting as to profits, unless complainant, as a condition of his prayer for such assistance, shall expressly waive the forfeitures and penalty. No reason, based upon principle, is advanced in support of the proposition, neither can I see that any exists. It is claimed, however, that the proposition is supported by authority, and several English cases are cited. Some of the cases by their looseness of expression and generality of statement would seem to do so, especially the case of Colburn vs. Simms, 2 Hare, 554. But it will be

found upon scrutiny that the cases cited are all based upon the decision in the leading case upon this question of Brand vs. Cumming, (cited 22 Viner's Abridgement 315), and that the rule deducible from them all goes to the following extent, and no further, viz: That equity will not compel a discovery by a defendant when such discovery would subject him to forfeitures or penalties, unless such forfeitures or penalties are expressly waived by the bill; provided the defendant takes the objection by demurrer to such discovery, or declines in his answer to make such discovery on that ground. Brand vs. Cumming, 22 Viner's Abridgement 315; Williams vs. Farrington, 3 Brown'sCh. Rep. 38; Mason vs. Murray, cited in last case at p. 40.

The defendant cannot submit to answer as to the discovery prayed, and at the same time insist upon the objection. In this case, he has so submitted to answer. The objection, therefore, comes too late.

The further objection that the statutory forfeitures and penalty can be enforced only at law does not concern the present motion, although it will be a proper matter for consideration in another stage of the case.

This brings us directly to the merits of the question upon the bill and answer. The question is, as has been already remarked, does the answer so far disprove the case made by the bill as to entitle the defendant to a dissolution of the injunction?

1. As to complainant's title. This is set up in the bill with great particularity, and an undisturbed use and enjoyment of the same for a long period of time

by complainant and those under whom he claims, is alleged. The answer in the first paragraph ignores complainant's proprietorship of the copyrights of the 12 maps, as set up in the bill, and proceeds as follows: "But defendant says, as hereinafter particularly alleged, that complainant and his transferrors were never of right entitled to any such copyrights, and that the same, if existing, are null and void." What is referred to "as hereinafter particularly alleged," is found in paragraphs 50 and 51 of the answer, and consists in allegations wholly on information and belief, to the effect that complainant's maps were not themselves original, but were copies or piracies of the work and labors of other persons. The only other allegation or denial contained in the answer affecting complainant's title or right is the 16th paragraph, and is wholly on information and belief.

It is seen, therefore, that all the allegations and denials of the answer in any manner affecting complainant's title or right are founded on information and belief merely; and none of them are supported by affidavits of persons having any knowledge of the facts thus alleged. Denials and allegations merely on information and belief are not sufficient to entitle the defendant to a dissolution of an injunction. They must be upon personal knowledge or supported by the affidavit of some person or persons having personal knowledge—Poor vs. Carleton, 3 Sum. 70, 78; Nelson vs. Robinson, Hemp. 464; U. S. vs. Sampergac. *ib.* 118; Conover vs. Mers, 3 Fish. Pat. Cas. 386.

For the purposes of this motion, therefore, the title of complainant must stand as set up in his bill.

2. As to infringement. The bill sets up copyrights in 12 different maps, and contains a general charge of infringement of them all, and especially of the first six; and also special charges of infringement as to certain of the maps, particularly the first, second, and fourth. The map first set up, and with which we have principally to do so far as the motion is concerned, is a map of Wisconsin, embracing parts of Illinois, Michigan, and Minnesota, alleged to have been made and published in 1865, and to have been entered for copyright May 11th, of the same year. Of this map, it is alleged in an amendment to the bill, editions were published and dated in the years 1866 and 1867. Copies of the said alleged edition of 1867, and of two others of complainant's maps, and of the defendant's map, alleged to be an infringement of the same, are filed with the bill as exhibits.

The answer, in general terms, denies the general charge, and also the special charges of infringement, but admits the taking of the boundaries of all the towns in Wisconsin, containing more than 36 square miles, from the complainant's map of 1867.

In addition to what is stated above, the bill contains voluminous references to instances of similarity and identity, gathered from examinations and comparisons, such as errors in complainant's maps, peculiarities of spelling and location of names, etc., as evidence of infringement; and the answer contains equally voluminous statements by way of explanation and avoidance of the same. These are merely matters of evidence. They were as fully before the court by means of the maps made exhibits as they could be by any state-

ments in the bill, and, being made matters of evidence, the statement of them in the bill was not only unnecessary, but in violation of a well-settled rule of equity pleading—see Story's Equity Pleadings, sec. 28, 252, note 1 to sec. 295, a, and sec. 266. When it is necessary to bring these matters before the court for the purpose of moving for, or of sustaining an injunction, or it is deemed important to call the attention of the court to them in some authentic form, it should be done by affidavit and not by allegations in the bill.

I allude to this subject in this connection, not so much because it is to materially affect the question now under consideration (the defendant having submitted to answer), but to call attention to the pernicious and growing practice of stuffing and overloading pleadings in equity with superfluous allegations and redundant and unnecessary statements; and also, as it is expressed in one of the ordinances of the English Court of Chancery, "to the end, that the ancient brevity and succinctness of bills and other pleadings may be restored and observed."

In order to avoid the effect of the admission in the answer of the taking by defendant in the preparation of its map of certain township boundaries from complainant's map of 1867, it is contended on behalf of defendant that the said map of 1867 is not covered by the copyright of the map of 1865, as being a new edition thereof, because: 1. The copyright laws of the United States contemplate and cover new editions of books only, and not of maps—Section 4 of the supplemental act of March 3, 1865, (13 Stat. at Large, 540,) is

referred to in support of this proposition. But that section is definitive merely of the word "book" as used in the act, and in no manner affects maps or any subject of copyright other than books, affirmatively or negatively. It will be seen, however, by an examination of section 5 of the act of February 3, 1831, (4 Statutes at Large, 437), in force at the time, and section 97 of the act of July 8, 1870 (16 Statutes at Large, 214), now in force, that subsequent editions of maps, as well as books, were then, and continue to be, clearly contemplated. 2. It is also contended that the map of 1867 is not entitled to the protection of the copyright of the map of 1865, as a new edition, because it differs from the latter materially in respect to its title, and also in numerous additions and alterations. The title of the map of 1865, as set up in the bill, and that of the map of 1867, as printed upon its face, are identical, so far as they are descriptive of the map. Following the descriptive statement are the following words and figures: "Published by S. Farmer & Co., Detroit and Milwaukee, 1865," the figures 1865 being changed to "1867" on the map of that date, and this is the only difference alleged or that can be found in relation to the title. The clause quoted, and in which the difference of date occurs, is no part of the description of the map, and is entirely unnecessary to an understanding of that which the title relates, and I think it constitutes no part of the title. It could not truthfully constitute a part of the title for the purpose of copyright, because by express enactment the title was, as it still is, required to be entered and recorded *before publication* —(4 Statutes at Large, 437, sec. 4; 16 ib., 213, sec. 90.) All that is required in connection with the fact of pub-

lication is, the depositing of a copy or copies within certain specified times after publication. (Ibid.) There is no time prescribed within which actual publication shall commence. That is left entirely to the option of the proprietor. The map of 1867 has, moreover, printed upon its face in a prominent position and in plain type the notice of entry for copyright required by law, showing clearly and plainly that the date of such entry was in the year 1865. I think this sufficiently indicated that the map of 1867 was intended for the map, or an edition of the map which had been so entered as specified in the notice; so that the date at the bottom of the title, even if it could be considered a part of the title, would, in the light of the notice, indicate to any person of ordinary comprehension a map, or an edition of a map, which had been copyrighted in 1865, and published in 1867. This case is very different from the cases cited by defendants' counsel—(Baker vs. Taylor, 2 Blatchf., C. C. 82; Ruy vs. Force, 2 Cranch., C. C. 208), in which there had been been an omission or erroneous statement of the year in which the copyright was obtained, in the notice; also from the English case cited by him (Mathieson vs. Harrod, Eng., Ch. 1863. 1 Chi. L. News., 99), which arose under an English statute, very different from ours, requiring the date of the first publication to be given. Those cases therefore have no application. As to the alterations and additions alleged in the answer to have been made to the map of 1865, in the map of 1867, there are none specified except as to the railroad system of Wisconsin, and that is not alleged except, inferentially, at least, by reference to the map itself. The edition of 1865, not having been made an exhibit, and not being before me, I

am unable to determine whether any and what alterations and additions were made, and of course whether such alterations and additions are of such a character in kind and extent as to make the map of 1867 an original map, and so deprive it of the protection of the copyright of the map of 1865. This can be determined only when the proofs are all in. For the purposes of this motion the map of 1867 must be deemed an edition of that of 1865, as alleged in the bill, and therefore protected by the copyright of the latter. 3. It is also contended that the notice of copyright is bad because it describes the court in which the entry was made as "the District Court for the Eastern District of Michigan," instead of "the District Court of the United States for," etc., as is the true title of the court. Suffice it to say that the statute prescribes the form of notice—(4 Stat. at Large 437, sec. 5,)—and the notice in this case is in the exact form so prescribed. It must therefore be deemed sufficient.

The courts, in the interest of learning and science, have at all times and in all countries recognized the right of subsequent authors, compilers and publishers to use the words of others to a certain extent; but the great difficulty has always been, and always must be, to determine where such use ceases to be legitimate, and becomes an invasion of the rights of others. The difficulty is greatest in cases of maps and the like, in which there is not, and cannot be, any originality in the facts or materials of which they are composed, and which facts and materials are equally open to all. The following rule laid down by Mr. Copinger (Copinger's Law of Copyright, 91,) comes as near to defining this

right as anything I have been able to find or can invent. He says: "The rule appears to be settled that the compiler of a work in which absolute originality is of necessity excluded is entitled, without exposing himself to a charge of piracy, to make use of preceding works upon the subject, where he bestows such mental labor upon what he has taken, and subjects it to such revision and correction, as *to produce an original result*; provided, that he does not deny the use made of such preceding works and the alterations are not merely colorable."

To apply this rule to the present case: What mental labor did the defendant bestow upon those portions of the complainant's map admitted to have been taken in the preparation of his own, viz., the boundaries of the larger townships of Wisconsin? None whatever, beyond the mere mechanical operation of reducing them from the larger scale of complainant's to the smaller scale of defendant's map. Neither does it appear that there was any revision whatever to ascertain if there were errors which needed correction, or for any other purpose. There is in fact nothing whatever to bring the case within the rule. So far as those boundaries are concerned it is clearly a case of naked piracy.

But it is contended that boundaries of townships are not a legitimate subject of copyright—that they are fixed and defined by statute law, and that the marking of them down upon paper is but a transcription in another form of the legal enactment. What is true in this regard is true in regard to all original materials from which maps are made, and that is that none of

them are subjects of copyright—they are open to all. But no one has the right to avail himself of the enterprise, labor, and expense in the ascertainment of those materials, and the combining and arrangement of them, and the representing them on paper. The defendant, no doubt, had the right to go to the common source of information, and having ascertained those boundaries, to have drawn them upon his map, notwithstanding that in this respect it would have been precisely like complainant's map (which, of course, it would have been if they were both correct). But he had no right to avail himself of this very labor on the part of complainant in order to avoid it himself. As appears by complainant's affidavit, these boundaries were fixed by the Boards of Supervisors of the respective counties, and not by legislative enactment, thus showing that the labor must have been much greater than it would have been if such boundaries could have been ascertained from the statutes of the State.

It is said the court looks at value more than quantity in these cases, and that in this case the value of what was taken is so small in comparison with the whole that the court will disregard it. The rule of law is correctly stated; but how is it as to the fact? The townships of which the boundaries are admitted to have been taken comprise nearly, if not quite, one half of the State of Wisconsin. Most of the smaller townships of the State, those comprising no more than 36 square miles, are rectangular—nearly all of them square —in form, and therefore easily projected on a map, while the townships in question are nearly all irregular n form, and therefore more difficult to represent

correctly on paper, requiring more, and a higher degree of mental labor and skill in the operation. Neither can it be said that this portion of the map is of less value because it represented the unsettled, or but sparsely settled, portions of the State. There might be some force in the suggestion if the region in question were a desert waste, uninhabited and uninhabitable, and valueless and unsought after for any purpose whatever. But here the facts are directly the opposite. These lands are among the most valuable in the State for agricultural purposes, for timber, and to some extent for minerals; are largely sought after for actual settlement and for speculation, and are rapidly filling up with a fixed and permanent population. It is to maps that persons desiring to settle or invest go to a very large extent for information as to locality, topography, markets, railroads, etc., and it certainly cannot be said that the part of a map representing this portion of the State is insignificant or of little value; nor, in my opinion, is it of any less value than that part of the map representing the settled portions of the State.

From these views it results that the injunction ought to be continued to the hearing without the necessity of entering into a particular consideration of other evidences of piracy gathered from a comparison of defendant's map with those of complainant, which were laid before me at the hearing. It must not be inferred from this, however, that that branch of the case has not received full consideration at my hands. Suffice it to say, that upon a careful and critical examination and comparison, I find evidence—some of which it has been attempted in the answer to explain and avoid,

with what degree of success it is unnecessary to consider here, and all of which is open to such explanation as the defendant may hereafter offer—which strongly confirms me in the belief that defendant's piracy of complainant's copyrights extends far beyond what is admitted in the answer, thus placing it beyond all doubt in my mind that justice requires that the injunction should be continued to the hearing.

The motion to dissolve is denied.*

Geo. O. Robinson, (of Robinson & Brooks), for Complainant.

Geo. V. N. Lothrop, of Counsel.

Alfred Russell for Defendant.

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* The decree on final hearing was in favor of complainant. Silas Farmer, the complainant, inherited the predilection for map publishing from John Farmer, his father, now deceased. In the Red Book of Michigan, it is said of him: "John Farmer was a kinsman of the eminent antiquarian, John Farmer, of New Hampshire, and was the publisher of several maps of Michigan and Wisconsin. His sectional map of those States is alone sufficient to gain him a high reputation, and it is worthy of note that it was engraved by his own hand. He died in Detroit, March 24, 1859."

John Farmer's old maps are frequently resorted to in the courts of justice in suits relating to titles to real estate. Many deeds recorded in the Wayne County Register of Deed's Office contain references to his maps. Silas Farmer, the present Historiographer of the City of Detroit, has of late years devoted his time and talent to the preparation of an Illustrated History of Detroit, now in press. It promises to be the best local history ever written in its thoroughness, fidelity to the truth of history, and literary merit. While not trained as a *litterateur*, Mr. Farmer is a writer of unusual merit.

Judge Longyear's highly interesting and able discussion of several points of equity practice as well as of the copyright laws, is our excuse for giving so much space to one case.

United States District Court—Eastern District of Michigan, in Admiralty.

JOHN CLARK

vs.

SCHOONER NEW HAMPSHIRE.

Maritime Contract—Land Contract—Jurisdiction.

Vessel not liable for proceeds of sale of merchandise by the Master.

Libelant shipped cargo by the schooner New Hampshire from Presque Isle to Detroit, with instructions to master to sell cargo on arrival at Detroit. The cargo arrived and was sold by the Master.

Action against vessel to recover the proceeds of the sale.

THE COURT, BROWN, DISTRICT JUDGE, held that there were two contracts, one to carry and one to sell, the first a maritime contract; the other a land contract. That the vessel had completed the maritime contract when the goods were delivered at the port of Detroit. The contract to sell was with the Master alone, making him consignee; and being a land contract, in which the vessel was not concerned, the court had no jurisdiction.

Libel dismissed.—January 12, 1880.

Brennan and Donnelly for Libelant.
George E. Halladay for Respondent.

United States District Court—Eastern District Michigan, in Admiralty.

JAMES DAVIDSON

vs.

THE BARGE POLAND.

Towage—Deceased Respondent.

Section 858 U. S. Rev. Stat. should be construed liberally towards a surviving party when justice demands it.

In this case the libelant sought to testify as to matters equally within the knowledge of the deceased respondent.

Sec. 858 of U. S. Rev. Stat. provides that "In actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other, as to any transaction with, or statement by the testator, intestate or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court. In all other respects, the laws of the State in which the court is held shall be the rules of decision as to the competency of witnesses in the Courts of the United States in trials at common law, and in equity and admiralty."

Decided January 3, 1876.

THE COURT, BROWN J., held that it was the intention of Congress to permit the court in cases falling within the proviso, to exercise its discretion against receiving the testimony of the surviving party where

the transaction would probably be denied by the deceased party if he were alive, and there are no extraneous circumstances throwing light on the subject.

But when the court can see that the transaction as stated by the surviving party is probable, and there are corroborating circumstances tending to support his version; in short, when it can see that justice demands that the surviving party should be sworn, the discretion of the court should be exercised so as to permit his testimony to be given.

George E. Halladay for Libelant.

F. H. Canfield for Respondent.

Superior Court of Detroit.

MARY E. BAKER

vs.

JAMES MAHER.

Common Carrier—Measure of Damages.

An expressman carrying the baggage of railway passengers from the depot to hotels and private houses is a common carrier, and is liable for the loss of baggage while in his care and custody.

The measure of damages is the value of the baggage.

Trial, verdict and judgment, March 16, 1880.

Plaintiff is the sister of the wife of Rev. Dr. J. H. Bayliss. The latter was appointed pastor of the Cen-

tral M. E. Church, Detroit, in September 1879, and on the 24th day of that month removed with his family from Indianapolis, Indiana, to Detroit. The plaintiff, who resided in Chicago, accompanied Dr. B. and family to Detroit, intending to remain some little time. She brought along a trunk containing valuable clothing and jewelry.

On arriving at the Central depot in the evening, defendant, who was an expressman who habitually carried baggage to and from trains, as well as other articles from place to place in the city, was employed to take the baggage of Dr. Bayliss and his family, and the trunk of plaintiff, to the residence Dr. B. was to occupy, at No. 436 Cass Avenue, corner of Sproat street. While on his way to that number defendant stopped at a house to deliver the trunk of some other passenger, and while in this house some one or more persons stole the plaintiff's trunk from defendant's wagon. The trunk was found the next day in an alley broken open and emptied of its contents, but there was never any trace of the clothing and jewelry.

Plaintiff's declaration contained one count in trover and one in case.

On the trial before Hon. J. Logan Chipman, judge of the court, and a jury, defendant sought to maintain the point that defendant was not liable as a common carrier, but only for gross negligence which defendant was not guilty of in this case.

He also sought to maintain the proposition that in any event defendant could only be held liable for the

loss of ordinary baggage, and not for jewelry and rich clothing valued altogether at more than $150.

The jury found a verdict for plaintiff in the sum of $388.13. Costs were taxed at the sum of $42.

Defendant conveyed to his wife his real estate about this time. Plaintiff filed a bill to set aside the conveyance as in fraud of her rights.

But this cause never came to a hearing, the case being settled by the parties.

The plaintiff had never before been in a court of justice, and while a very intelligent lady, knew almost nothing about the forms and methods of procedure, yet she proved a very cool, clear, candid and intelligent witness. Mr. Hawley is a very skillful examiner of witnesses, but he did not in his cross-examination of Mrs. Baker shake her testimony in chief in the least. She gave the history of articles of jewelry with great particularity when asked, and showed herself possessed of a wonderful memory.

The following is the charge of the Court, CHIPMAN, J.:

Gentlemen of the Jury:

The plaintiff brings this action against the defendant, to recover certain property belonging to her, which was lost by the defendant, which she had conveyed to his charge as a common carrier.

It is my duty, gentlemen, under the law, to charge you that the defendant is liable for some damages.

The question of damages is a question entirely for you, under the evidence. The law is for the court. You are to take the law absolutely, as the court gives it. If you fail to do that, you do great wrong. You violate your oaths here, and you wrong the parties. Because, if you make a mistake in the law, there is no redress. If the court makes a mistake in the law, there is a tribunal above the court that can correct the error, and compel the court to do that which is right.

Something has been said, gentlemen, about the hardship of this case; and I deem it my duty to call your attention to that; because such considerations have nothing to do with the performance either of your duties or my duties. We are both sworn officers of the law, and we are here to enforce the law; we are not here to enforce our own ideas, but we are here to enforce the law, whether we deem it right or wrong. The law may, in our opinion, operate harshly in certain cases, but still it is the law, and we have no option. We must enforce it exactly as we find it. It is no hardship, gentlemen of the jury, to require a party to live up to his contract, whatever that contract is. The contract of the defendant in this case, in receiving this baggage, or this property, was to carry it safely to the place designated, and there deliver it. For that a price was fixed. The price was named, or was agreed upon between the parties, and that constituted the contract between them; that he was to deliver that property safely; to deliver it at all events, saving the act of God or the public enemy; and they were to pay him the stipulated price. The evidence tends to show, or does show, because it is undisputed in the case, that the property was not delivered, and never

has been delivered. Undoubtedly, gentlemen of the jury, the property was lost through no error on the part of the defendant, unless the defendant was guilty of negligence in leaving it in the street unprotected. But whether by error upon his part or not, the law remains the same. That property is conveyed to the common carrier, and it is his duty to watch over it, protect it, and deliver it safely. At the time he received the property, he no doubt had the right to inquire as to the kind of property it was, to ascertain whether it was property which required a due amount of care. He is not in the position of a railroad company which is compelled to carry baggage. He is a common carrier of any articles, and his liability to carry is only confined ordinarily to the capacity of his dray or vehicle. He has to carry anything which he can conveniently put upon that vehicle. No doubt he has the right of all common carriers to ascertain what he is carrying, and he may make inquiry. The value of the article may make some difference as to the price. It certainly may make a great difference as to the vigilance and care which he exercises in protecting it. He has the right to inform himself in these particulars, and it is his duty to inform himself if he desires to be protected by the use of this diligence, or to be rewarded by increased pay. In this case no such inquiries were made. The baggage, or the trunk, was received with its contents, and it was lost. That leaves but one question for you: what was the value of the contents of this package. That is entirely a question of fact, and it is there and there alone that the field of your inquiry begins and ends. With anything else

you have nothing to do. You have nothing to do with the hardships of the case, either upon one party or upon the other. You have no right to say to yourselves, it would be hard for this lady, the plaintiff, to lose her property, or to say, on the other hand, it would be hard for Maher, the defendant, to pay for that property. But you should remember the rule of law, whatever the value of that property proved in evidence here is, that you must award.

Now, whatever that value is, you must follow it inflexibly. That is a matter of testimony. You have heard the witnesses, and whatever your good judgment, your sound sense determines from the testimony is the value of that property, whether it is much or little, without regard to the interests of either the plaintiff or defendant, you must give that value.

It is my duty, gentlemen of the jury, in charging you in regard to this matter of damages, to say that you must look carefully into all the evidence. Of course, to give too much would be wrong. To give too little would be wrong. Your duty is to give exactly what is right. You must not impose too great a burden upon the defendant here. You must not take that from the plaintiff which belongs to her. But you must find exactly, if you can, what that property was worth on that 24th day of September, on which it was conveyed to the defendant, and on which it was lost. The value at that time, with interest to the present date, at the rate of seven per cent, will be the amount of damages which it will be your duty to award.

Now, there are elements of value. You have heard

the testimony; the time that this property had been used; that is a circumstance which you should honestly consider, whether there has been a depreciation in price, or appreciation in price, since the articles were bought. That is for you to consider. What the real value of the article is, that is for you to consider. Their real value to a person situated as she is; not to herself alone, but what their value would be to ordinary people, under all the circumstances of the case. She has testified in regard to what she paid for those articles. Of course, whether they are worth what she paid for them or not, is for you to determine. Your experience in human affairs will teach you what weight to give to the testimony upon this subject, both *pro* and *con*. You are to take the entire testimony, and to ascertain from that what this property is actually worth. Whatever this property is actually worth, that you will respond to here, in a sum of money by your verdict, fixing first the value, then calculating interest up to the present time, and that will constitute the amount of damages which you will render in this case.

Chas. B. Howell and Edwin F. Coneley for plaintiff.
Hawley & Firnane for defendant.

Livingston Circuit.

DANIEL R. NEWMAN

vs.

MAYNARD BOWMAN.

Assault and Battery—Measure of damages when the general issue is pleaded.

The plea of the general issue only admits proof denying that any assault was committed.

Justification can only be proved when notice of the special matter in defence is annexed to the plea of the general issue

But under the general issue defendant may offer proof of all the circumstances in the case, in mitigation of damages.

Assault and battery defined. Evidence defined. Nominal damages and exemplary damages distinguished. Preponderance of evidence.

Duty of the jury in weighing evidence explained.

January Term, 1884.

Both parties are farmers, residing in the town of ————, Livingston county. The defendant's father had dug a drain across a portion of his farm. The result was that plaintiff's farm was, to some extent, flooded. This led to a war of words between the plaintiff and defendant's father. The defendant came up while they were engaged in this conversation.

Defendant claimed that plaintiff drew a knife upon him and advanced towards him, and that his assault upon plaintiff was thus provoked, and that all he did was in self defence.

Plaintiff claimed that he only drew a knife after defendant had knocked him down twice.

The jury found a verdict for plaintiff for $75.

CHARGE OF THE COURT.

HON. WM. NEWTON, Judge of the Seventh Judicial Circuit, presided upon the trial, and charged the jury as follows:

Gentlemen of the jury:

Some requests were handed me last night on the part of the plaintiff, the substance of which I will incorporate in the general charge which I will read to you directly. Defendant's counsel, this morning, after the assembling of the court, presented some requests which I will give you:

1. "If the plaintiff provoked the defendant, and the assault was the result of that provocation, he could recover nothing beyond actual damages; at least he would be precluded from claiming any damage for injured feelings or mental anxiety."

2. "If the jury believe the evidence to the effect that the plaintiff made the first assault upon the defendant, according to the testimony of the defendant and his witnesses, in a menacing and threatening manner with knife in hand, then the jury are to take into consideration such evidence by way of mitigation of any damages arising in the case, even to the extent of reducing such damages to merely nominal damages."

3. "If the jury believe the testimony of the defendant and his witnesses to the effect that the first assault was made by the plaintiff with knife in hand, then in order to obtain any more than nominal damages, the burden of proof is upon the plaintiff to show that the force employed by the defendant in resisting and defending his person, was excessive."

4. "The jury are instructed that any evidence of the plaintiff's acts and purposes in the matter, which the defendant has shown, as being a provocation, and by the jury believed to be a provocation of the assault for which suit was brought, such evidence may be considered in mitigation of such assault, and in explaining the surrounding circumstances, provided such evidence tends to prove only facts which occurred at the same time and form a part of the *res gestæ*."

5.—"If you are satisfied from the evidence, that the defendant was threatened with an immediate attack by the plaintiff, armed with a deadly weapon, he would be authorized to act." I have added: "To use necessary force to repel his assailant, and his actions are to be judged in the light of the circumstances, as they appear in the evidence."

6.—"If from all the circumstances in the case, the jury believe that the defendant employed only such force in protecting his person as the exigencies of the time demanded, then the damages would only be nominal."

The action, gentlemen, is one of trespass brought by the plaintiff to recover damages for an alleged assault

and battery to his person, last summer, by the defendant.

An assault and battery is committed where a man without any sufficient cause, excuse or justification, intentionally assaults and beats the person of another, inflicting upon him bodily injury. But it is not confined always to corporal injury. For to spit in a man's face, insolently and in anger and designedly, would also be an assault and battery, although no bodily pain was inflicted. In a case of this kind also, the defendant, when the suit is commenced is entitled to file a plea. Where he denies, simply, that the assault and battery has been committed by him, the general issue answers that purpose. Where he intends to justify his conduct by showing that he was first assailed and that he was subject to great bodily injury and that he, in order to protect himself, had used only force sufficient to repel the agressor, he is required in order to make out that justification to give the plaintiff notice of his defense. In this case, for some reason not explained, no notice was attached to the plea. They pleaded simply the general issue. That put in issue the fact of an assault and battery having been committed, but it would not allow evidence of justification, because the rules of law require that that should be pleaded. Under our system we do not resort to what was called pleas at the common law or special pleas, setting up the special matter, but a notice is required under our practice to be given to the plaintiff that he may be apprised distinctly of the defence to be made. This was not done, but on the trial the defendant proposed to offer in evidence all the circumstances attending this transaction in mitigation of

the damages which the plaintiff would be entitled to recover. I stated at the time I had considerable doubt about the right of the court to admit testimony which would have been admissible as a full defense, if true, under a special plea or notice, but, for the furtherance of justice and that no undue advantage might be taken of the defendant, I preferred to allow the testimony in mitigation of damages. It is before you for that purpose, and that only. In considering this case, gentlemen, and every other case of assault and battery, it is necessary that you should consider the age, the size and the physical ability of the parties in the assault, as well as the fact of their being armed or not armed. The plaintiff in this case is a man over the age of fifty years. The defendant is a young man of the age of twenty-two years. The injuries received have been detailed to you by Mr. Newman, Mr. Whittaker, Mr. Vreeland, by his (Vreeland's) father, and by the physician. Also the circumstances attending the affray upon that occasion have been detailed to you by Mr. Newman, Mr. Whittaker, and his father, and you remember what the testimony is. On the part of the defense there is no attempt to deny that an assault and battery had been committed, nor the extent of the injuries inflicted. But he claims that the plaintiff with knife in hand, within striking distance of him, and in a hostile manner, made the first assault on him, and that believing he was in imminent peril of great bodily injury to himself, he inflicted the injuries complained of. And he further claims that the force he used was no greater than was necessary to shield and defend himself. To maintain this he was a witness in his own behalf.

He also called his father and his sister, Charles Graham, Frank Lockwood and Charles Lockwood to support his version of the transaction. You will observe the direct and palpable conflict of testimony between the witnesses for the plaintiff and the witnesses for the defense concerning the origin of the affray. It is confined to a very narrow compass. Whether Mr. Newman was there unarmed at that time, or whether he was armed with a knife open in his hand, the conflict is direct and palpable. And the court has no power to aid you by intimating any opinion as to the credit to be given to any witness, nor the weight to be given to the testimony of any witness. The law has wisely left the determination of all questions of fact, and also the determination of the credit of the witnesses and the weight to be given to testimony to the jury. And I cite what the supreme court of this State has said on this subject: "The jurors and they alone are to judge of the facts and weight of the evidence. The law has established this tribunal because it is believed that from its numbers, the mode of their selection, and the fact that the jurors come from all classes of society they are better calculated to judge of motives, weight, probabilities, and take what may be called a common sense view of a set of circumstances involving the acts detailed in evidence, than any single man, however pure, wise and eminent he may be."

You therefore see how important your position is. You are a part of this tribunal; how important the duty is which you are to perform, in view of the direct and palpable contradiction of the witnesses on the part of the plaintiff and on the part of the defendant.

Usually there are discrepancies in testimony growing out of the imperfections of human memory, understanding or misunderstanding of the facts stated by the witnesses, and which can easily be reconciled with an honest purpose on the part of witnesses and may be chargeable to mistake or misapprehension. But that state of things does not appear to exist in this case. One or the other of these sides has not told the truth. Such a contradiction of facts going to the merits of the controversy and affecting the opinion of damages could not exist in harmony with honesty on the part of some of the witnesses. The defendant has pleaded only the general issue and given no notice of justification. The evidence given of what occurred was allowed in mitigation of damages. And if the defendant and his witnesses have told you the truth—if you believe them—then the assault and battery was not wicked and malicious on the part of the defendant and was only to protect himself. And although he cannot under the general issue justify the act, the plaintiff could only recover nominal damages. He could not recover actual or exemplary damages.

Now, gentlemen, somebody has sought to pollute and and darken the fountain of justice, to corrupt its channels and render justice abortive in doing that which is just and right between the parties to this suit. The purpose of the court and the jury is to ascertain the truth and do justice between the parties according to the evidence. Evidence is not merely that which a witness swears to. Evidence is that which satisfies the consciences, and convinces the minds of the jurors of the truth of the existence of a fact sought to be established. The plain-

tiff must produce a preponderance of evidence in support of his claim before he can recover. But a preponderance of evidence does not mean the number of witnesses on one side or the other. It means rather the quality and kind of evidence produced. If that which is produced satisfies your minds of its truth—if it points you to the very right of the controversy, it is your duty to follow it, for it is sterling, and not counterfeit. Although the truth may be obscured or dimmed by the imperfections of human observation or by the corruption of dishonest witnesses, it is your duty to follow it, the truth, and make it the Polar star of your conclusions.

You have a right to consider the interest any witness may have in the case, his means and accuracy of observation—whether the witness is honest or dishonest; to consider also the manner of the witness in giving his testimony. You can consider whether the story told by any witness is reasonable and consistent in itself or otherwise. Is it unnatural and inconsistent? You alone can determine these questions. I cannot give you, under our system, any view or opinion that may be entertained by the court as to the facts. You alone must determine the facts. I therefore charge you, that if the testimony of the plaintiff and that offered on his behalf satisfies you of its truth the plaintiff will be entitled to recover all the actual damages he has sustained as the natural result of the injury complained of. He will also be entitled to such exemplary or reasonable damages as you may think right in view of all the circumstances of the case. And you may consider the humiliation and disgrace, and the bodily and mental pain or suffering caused to the plaintiff by reason of

the assault and battery inflicted upon him in a public place in the presence of his neighbors. You will also consider whether or not the assaulting and beating of the plaintiff was malicious and cruel, for malice and wanton cruelty tend to increase the damages. But if the defendant's version is true, then the plaintiff could only recover nominal damages, unless you find the defendant made use of greater force than was necessary to protect himself. For though the plaintiff may have made the first assault, that would not warrant the defendant in using any more force than was necessary to repel the assault, and if you find from the evidence that he did use more force than was necessary by following the plaintiff after he ceased the struggle or retreated or attempted to do so, then every blow struck by the defendant after that would be an excess of force and would make him a wrong doer. Or, if while he was down, if you find any danger threatened by the plaintiff or defendant had ceased, and you find that he kicked him, and if you further find that such kicking was cruel and unnecessary and produced an injury to the shoulder of the plaintiff, the defendant would be liable for all the actual damages sustained by him, and the probability of future damages resulting naturally from the injury inflicted at that time. But if you find that any excess of force used was wanton and cruel and unnecessary, then the plaintiff would be entitled to recover for wounded feelings and the humiliation suffered by him, such reasonable damages as in your best judgment, without passion or prejudice, you may think him entitled to. Such damages cannot be proved to you by dollars and cents, and in such case the law leaves the question to your best judgment.

That is all I desire to say to you, gentlemen.

(To the Clerk) Swear an officer.

R. H. Person and ——— *Warren* for Plaintiff.

E. H. Sellers and *Dennis* and *Terrance Shields* for Defendant.

Wayne Circuit Court.

PETER L. MILES

vs.

FREDERICK L. SEITZ.

Forcible Entry and Detainer.

A party seeking relief by virtue of the proceedings of a court of inferior jurisdiction, must allege in the proceedings facts that show that the court had jurisdiction.

The Court, BROWN J.: The plaintiff in this case having been forcibly ejected by the defendant from certain premises in this city, brought suit against the defendant under the Forcible Entry and Detainer act, and having obtained restitution of the same, now brings an action of trespass for the loss of business and profits, and for damage done to personal property.

In the second count of his declaration, plaintiff sets forth a claim for treble damages under the statutes, Comp. Laws of 1857, Sec. 4997, substantially in the following words: "And for that the said plaintiff hereto-

fore, &c., was in possession of certain premises, &c., and being so in possession the said defendant forcibly entered said premises, and by force ejected said plaintiff and held possession of said premises, and thereupon such proceedings were had by said plaintiff that afterwards, to wit: on the 14th day of February, A. D. 1868, said plaintiff obtained restitution of said premises under Chapter 150, Comp. Laws of this State, "By means," &c.

To this count defendant demurs, because the plaintiff does not state before what court or officer, or between what parties, or in what locality or jurisdiction, or in what form of proceeding or process he recovered possession of said premises.

It will be seen from the statute that the plaintiff can found his claim for treble damages only upon recovery of possession under the Forcible Entry and Detainer act. Now there is no rule of pleading better settled than that a party seeking relief by virtue of the proceedings of a court of inferior jurisdiction, must set forth in his pleadings all the facts necessary to show that the court had jurisdiction in his case. (Burrill's Pr., 279; Dakin vs. Hudson, 6 Cow., 221; Dight vs. Darner, 1 Doug., 388; Bowman vs. Russ *et. al.* 6 Cow., 234.) Indeed, the New York reports are full of cases in which pleadings have been held defective upon this ground. (4 Abb., N. Y. Digest, 395.)

After the requisite jurisdictional facts are alleged, the general statement "such proceedings were had" is sufficient. As the count in question contains no allegation

showing the name of the officer or court, or any jurisdictional fact, I think it clearly defective, and the demurrer must be sustained, with leave to amend within ten days.

(September 18, 1868.)

Moore & Griffin for Plaintiff.

Levi Bishop for Defendant.

Wayne Circuit.

PETER L. MILES

vs.

FREDERICK L. SEITZ.

When Demurrer may be Argued.

When there is a demurrer to one count and pleas to the others, the demurrer may be heard and disposed of before the trial of the issue of fact, and permission should be given to call it up for argument at any time when the court can hear it.

By the Court, BROWN J.: This is a motion on behalf of the plaintiff for the immediate argument of a demurrer to one count of his declaration, there having been a plea to the remaining counts. The case was noticed for trial and placed among the issues of law and those of fact. Section 4,347 of the Compiled Laws provides that a notice of trial of every issue of fact shall be served, &c. Section 4,348 directs that a note of issue joined in any case shall be served on the clerk. Rule 58 prescribes a classification of all cases in which notes of issue have been filed, directs their separate arrange-

ment under the heads of "Issues of Fact," "Issues of Law," "Imparlances," and "Criminal Causes," but does not require all cases which might be arranged under those heads to be placed on the docket, nor attempt to prescribe the order in which they shall be heard. Under the practice in this country issues of law are frequently not placed upon the docket, imparlances rarely and criminal cases never.* The statute requiring notes of issue, I think, is limited by the preceding section to issues of fact. I know of no rule either requiring issues of law to be placed on the docket or prohibiting the court from hearing such issues at any time, even when there is an issue of fact in the same case. A contrary course, and an obligation on the part of the court to hear cases in their order on the docket, would enable a defendant to obtain at least one continuance of a cause, simply by filing a demurrer. It seems to me parties would be deprived of their constitutional right to a speedy trial by such a course. My own impressions upon this subject have been fully confirmed by the opinions of my predecessors, and by those of the most extensive practitioners at this bar. As the demurrer must be disposed of before the issue of fact can be tried, I will permit it to be taken up at any time when the court is not engaged with jury cases.

(Sep. 9, 1868.)

Moore & Griffin for Plaintiff.

Levi Bishop for Defendant.

* Criminal cases have been placed on the docket of the Wayne Circuit since 1873 at least, when the editor commenced practice at this bar.

Wayne Circuit Court.

In the matter of the account of CASPAR SCHULTE, Coroner, for fees and expenses in holding an inquest upon the body of an unknown man.

Coroner's Fees.

By the Court, BROWN J.: In this case charge is made for issuing twelve subpœnas at twenty-five cents each, when only six witnesses were sworn. Strictly no charge could be allowed for more than one subpœna without some showing that the names of all the witnesses could not be conveniently inserted in one writ, but I understand the practice has obtained with the County Auditors and with my predecessors of the allowing a subpœna to each witness, and I have hitherto conformed to that practice, although with great reluctance. But I would certainly in no case allow for a greater number of subpœnas than of witnesses sworn, and hence there must be a deduction of $1.50 upon this item.

There is also a charge of sixty cents for swearing witnesses, when the statute is peremptory that not more than fifty cents can be charged in any one case. (2 Comp. Laws, Sec. 5,648.)

A charge of seventy-eight cents for taking testimony must also be disallowed. Under Sec. 6,090, fees can be allowed for reducing testimony to writing only in cases of apprehended homicide. The account is allowed at $29.24.

The other accounts presented by Dr. Schulte are subject to the same disallowances and are also suspended

until the necessity for *post mortem* examination is shown in each case.

(Sep. 9, 1868.)

Wayne Circuit---In Chancery.

FERDINAND MONIER

vs.

THOMAS W. MIZNER.

Two Suits for Same Cause of Action.

Complainant should elect in which suit he will proceed.

By the Court, BROWN J.: This is a motion to compel the complainant to elect whether he will proceed in this suit or a suit at law, alleged to be for the same cause of action.

I have already held that a plea in abatement of the pendency of the other suit will not lie in either case, but it is equally clear that where two suits are substantially for the same cause of action the complainant should elect in which suit he will proceed, for the defendant should not be harassed and annoyed by oppressive litigation. (Barb. Ch. Prac., 346; 1 Dan. Ch. Prac., 658.)

(October 15, 1868.)

Moore & Griffin for Complainant.

Levi Bishop for Defendant.

Wayne Circuit Court.

FERDINAND MONIER

vs.

THOMAS W. MIZNER.

Two Suits for Same Cause of Action.

A party may elect which form of action—law or equity—he prefers.

By the Court, BROWN J.: To the plaintiff's declaration in this case, defendant pleaded in abatement the pendency of another action for the same cause upon the equity side of this court. To this plea the plaintiff demurred, and the sole question to be determined is whether the pendency of a suit in chancery is sufficient to abate a suit at law. The remedy in one form of proceeding may be much more complete than in the other, and the plaintiff should not be debarred from choosing that form which will best promote the ends of justice.

The following authorities cited by the plaintiff's counsel fully sustain him in this position: Black vs. Lackey, 2 B. Mon, 257; Peak vs. Buell, 8 do., 428; Colt vs. Partridge, 7 Met., 570; Hatch vs. Spofford, 22 Ct., 485; Blanchard vs. Stone, 16 Vt., 234; Ralph vs. Brown, 3 W. & S., 395.

The rule is held equally good where the pendency of an action at law is pleaded in abatement to a chancery suit (1 Dan. Ch. Prac., 558; Story's Eq. Pleadings, Sec. 742.)

The demurrer is sustained with costs.

(October 15, 1868.)

Moore & Griffin for Plaintiff.

Theo. Romeyn for Defendant.

Kent Circuit Court.

ADRIAN VAN DRIELE

vs.

HARRIET FOSS.

Costs—Stenographer's Fees.

The stenographer's fees for copy of testimony taken in the Circuit for use in settling a bill of exceptions cannot be taxed as costs.

Motion for retaxation of costs.

The case having been reversed in the Supreme Court on writ of error brought by defendant, she now sought to tax as an item of costs the sum of $60.60, paid to the stenographer for a copy of the record used in settling the bill of exceptions.

The Court, MONTGOMERY J.: The question presented is whether this item is a disbursement made in the case which the prevailing party is entitled to tax as a part of her costs.

The expenditure is not a necessary incident to the trial of the cause. The transcript is a mere convenience for the attorney, rather than an absolute necessity.

The statute which makes provision for the appointment of the court stenographer provides that such minutes shall be paid for by the party who may require them; and there is no provision of the act which evinces the legislative intention that the item should be taxable in any case against the defeated party. It is to be presumed that if such had been the legislative intent it would have been expressed.

My conclusion is that the item in question is not taxable.

Decided May, 1882.

W. E. Grove for Plaintiff.

Eben Smith for Defendant.

Wayne Circuit Court.—In Chancery.

ELIZABETH H. SCHROEDER.

vs.

HENRY J. C. SCHROEDER.

Alimony.

Attachment may be granted for failure to pay temporary alimony, even though respondent is adjudged a bankrupt, and is ignorant of what his employers will pay him for his services as clerk.

By the Court, BROWN J.: In this case Judge Walker just before leaving the bench made an order that the defendant pay the sum of $25.00 a month as temporary alimony, and an order was also made that he give bonds or security to pay said temporary alimony or that a receiver of his estate be appointed. Within a

day or two after this and on July 1st, the defendant's creditors, Schloss Brothers, of this city, put the defendant into involuntary bankruptcy, and he has been adjudged a bankrupt, and the assignees in bankruptcy have taken possession of his property. Now the complainant moves for an attachment for contempt of court in not paying over said alimony according to said order; and to show cause why such attachment should not issue, the defendant sets forth the above facts and that he is unable to pay said alimony and has no means of earning any, except as he is employed as a clerk by his assignees in bankruptcy, and that in that employment his compensation has never been fixed and he does not know even how much it will be, or whether he will receive anything. The court allowed the attachment on the ground that temporary alimony was in the nature of an allowance for the support of the wife during the suit, and the defendant was legally bound to furnish her support during the pending of the divorce suit as his wife.

Attachment granted.

(Aug. 18, 1868.)

Wayne Circuit Court.

JOHN BUCKLEY

vs.

WILLIAM JOHNS.

Motion for security for costs denied.

By the Court, BROWN J.: This is a motion for security for costs, based upon an affidavit that the plaintiff is

irresponsible, that his claim is unjust and frivolous, and that affiant has a good defense upon the merits. The statute (2 C. L., Sec. 1,145) empowers the court to require the plaintiff to file security where the suit has been commenced in the name of any person being insolvent, who shall have been discharged from his debts pursuant to the law for the collection of any debt contracted before the assignment of his estate; and a further statute authorizes the court to require security "when it shall appear reasonable and proper;" but I have never understood it to be the practice either in this country or in England to compel a resident plaintiff to file security simply because he was poor. (Field vs. Carron, 2 H. Bl., 27; Gale vs. French, 16 N. H., 95; Leazar vs. Cota, 43 N. H., 81; Ball vs. Brace, 27 Ill., 332.)

If it could be made to appear that the plaintiff fraudulently kept his property beyond the reach of an execution, or that he was "pursuing his claim under circumstances wearing an aspect of oppression or vexation, or where facts exist which raise a legal presumption that his claim is unfounded," courts have ordinarily imposed some restraints upon its prosecution, but I think the facts creating these suspicions must be set forth, and that the mere belief of the defendant is insufficient. (Feneley vs. Mahoney, 21 Pick., 212.)

The motion must be denied.

(Sept. 18, 1868.)

————for Plaintiff.

————for Defendant.

Oakland Circuit Court.

THE PEOPLE

vs.

CHARLES QUICK.

Drawing of Jurors—Challenge to the Array.

When only one of two officers named by statute as the ones whose duty it is to make up lists of jurors from towns or wards, acts in that capacity, the panel will be quashed.

Respondent challenged the array of the panel for the February Term, 1884.

The Prosecuting Attorney demurred.

Respondent joined in the demurrer.

The facts alleged in the motion were found by examination of the files in the Clerk's office to be true.

The Respondent claimed that his constitutional rights were infringed where but one of two town or ward officers charged by law with the duty of making up jury lists, acted in that capacity.

CHALLENGE TO THE ARRAY.

And now at this day, to wit, on the twelfth day of February, A.D., 1884, come as well the said people as the said defendant, by their respective attorneys; and twelve jurors of the regular panel being summoned also come; and thereupon the said defendant, by Thos. J. Davis and A. R. Tripp, his attorneys, does challenge the array of the panel for the following reasons:

1st. Because the said jurors on said panel and for this term of court were irregularly and illegally selected and drawn from packages containing jury slips or ballots on which were the names of persons upon the jury lists that had been returned for the year 1883, from the townships and wards comprising the supervisor districts of Oakland County, among which were the townships of Addison, Avon, Brandon, Farmington, Milford, Pontiac, Springfield, Troy, and White Lake, whose jury lists contained no proper certificate that the persons named therein were chosen and returned to serve as jurors in the manner provided by law.

2nd. Because the jurors on said panel and for this term of court were drawn from packages containing jury slips or ballots on which were the names of the persons upon the jury lists that had been returned for the year 1883 from the townships and wards comprising the supervisor districts of Oakland County, among which were the townships of Addison, Highland, Independence, Lyon, Oakland, Orion, Springfield, and White Lake, whose jury lists for said year were irregularly and illegally made out and signed by less than a majority of the officers designated by the statute for making out and signing the same, in this, that the lists from the townships of Addison, Orion, and Springfield were made out and signed by their respective supervisors alone, and from the townships of Highland, Independence, Lyon, Oakland, and White Lake, said lists were made out and signed by the respective township clerks only.

3rd. Because the jury list returned from the 1st ward of Pontiac City for the year 1883 was made out and signed by the supervisors and Herbert Heitsch one of the two aldermen of said ward, and the name of said alderman so assisting in making out and so signing said list was placed thereon as one of the persons chosen and returned to serve as petit jurors from said ward, and that said Heitsch was regularly drawn and summoned to serve as juror for this term of court and is now in attendance upon the court as one of the regular panel of jurors.

And this he is ready to verify. Wherefore he prays judgment and that the panel aforesaid be quashed.

A. R. TRIPP and THOS. J. DAVIS,
Attorneys for Defendant.

Dated, February 12th, 1884.

The Court, STICKNEY, J.: Held, that the selection of the jurors was illegal, and quashed the panel.

S. W. Smith, Prosecuting Attorney, for the people.

Thos. J. Davis and *A. R. Tripp* for defendant.

Oakland Circuit Court.

CHARLES D. MILLERD

vs.

ORESTUS MILLERD.

Deposition—Certificate as to Notary's Official Position.

The requirement of Act 210, Session Laws of 1879, that the clerk of the principal court of record should certify to the official position of the Notary of another State or Country before whom a deposition is taken, is matter of substance, and is not waived by failure to give the notice of objections to matters of form named in Circuit Court Rule No. 51.

Motion to strike deposition from the files.

Defendant gave the statutory notice of the taking of the deposition of one Robert Allison, before a Notary Public in Ontario, Canada. The deposition was taken, plaintiff not appearing.

Due notice of the filing of the deposition in the office of the Clerk of the Circuit Court was served upon plaintiff's attorney. Eleven days afterward plaintiff's attorney entered a special motion to strike the deposition from the files, on the ground that there was no certificate of the clerk of the principal court of record of the county where the deposition was taken, or other principal county officer, showing the official character of the pretended Notary. (*Act No. 210, Session Laws 1879.*)

The deposition was certified and returned under the hand and official seal of the notary regularly.

Defendant resisted the motion on the ground that the objection came too late, and that the defect was waived under Circuit Court Rule 51. Also on the ground that the Notary held his office for life, had an official seal by Statute, and that no County officer had any record of his appointment.

The Court, STICKNEY J., *Held*: That the lack of the certificate was matter of substance, and not of form; that Rule 51* did not apply, and that the objection to the deposition might have been made on the trial without motion or notice.

Motion Granted.

Thos. J. Davis for Plaintiff.

Elliot R. Willcox for Defendant.

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*Rule 51 reads as follows: "The party taking any deposition shall, upon the same being received and filed by the clerk, give notice thereof to the opposite party. All objections of *form* to any such deposition shall be deemed to be waived, unless the same shall be filed in writing and served on the opposite party, within two days after such notice."

As to form see { 4 M., 554. 11 M., 218. 12 M., 241. 18 M., 387.

Depositions taken *de bonis non*, when not to be read. 20 M., 11.

Objections taken before a Commissioner must be raised when deposition is offered in evidence, or they will be deemed waived. 23 M., 56.

Wayne Circuit.

HENRY MICHAELS ET. AL.,

VS.

SAMUEL SCHOTT.

Service of Process—Rights of Non-Resident Witnesses.

A witness from another State is not subject to arrest or service of process in a civil suit while in attendance as a witness, and while going to and returning from the court in which he gives testimony.

Motion to set aside service of civil process.

By the Court, JENNISON J.: The parties making this motion were citizens of New York, and came to Michigan for the sole purpose of giving testimony voluntarily in a cause then pending in a Michigan court. Before being excused from attendance as witnesses, the defendant caused civil process to be served upon them.

The motion is made to set aside the service of said process on the ground of privilege. It is resisted for the reason that the language of our statute extends the benefit of privilege to cases of arrest only and not to the mere service of civil process. The statute provides that "every person * * * duly subpœnaed as a witness to attend any court * * * shall be exonerated from arrest in any civil suit while going to the place where he shall be required to attend, while remaining in attendance as such witness, and while returning therefrom." 2 Comp. Laws, Section 5919.

The question then arises, Does the said provision

limit the power of the court to interfere? In some of the earlier cases it is said that the privilege of the witness was not considered the privilege of the person attending, but that of the court which he attends. 2 Wm. Black, R. 1190.

In Matthews vs. Tuffts, 87 N. Y. court of appeals, p. 568, the court in a unanimous opinion held "that a summons could not be served upon a non-resident of the State while attending court as a party or witness; that the immunity does not depend upon statutory provisions, but is deemed necessary for the due administration of justice."

In Person vs. Grier, 36 N. Y.. Rep. 124, the question was directly raised under a statute similar to ours, and after full discussion the court asserted the broad doctrine that non-resident witnesses and parties while in attendance at court and returning home were privileged from the service of any process (based on causes of action arising prior to coming into the State where such court was held), and that such was the weight of authority, citing numerous cases.

In re Healy, 53 Vermont, 694, a leading case on the subject, the same doctrine was maintained under a statute like ours.

The decisions of the federal courts are also quite pronounced on the subject. See Bridges vs. Sheldon, 7 Fed. Rep.. 43; Atchison vs. Morris, 11 Id., 582; Larned vs. Griffin, 12 Id., 590; Nichols vs. Huton, 14 Id., 329.

In Nichols vs. Huton, the United States Circuit Judge says that though this rule of privilege from service of any process on non-residents of other States came into existence when a defendant might be arrested on civil process; and while that fact had much to do with that rule, yet it was not the only reason for its adoption.

In Atchison vs. Morris, *supra*, United States Circuit Court Judge Drummond said that while it may be going very far to extend the privilege of personal protection to non-resident witnesses in their attendance on the courts and returning home, yet a witness from another state who is required to attend a court should feel that he is not subject either to arrest or the prosecution of a civil suit; that he may be a debtor to various parties in the jurisdiction where he is required to attend, and might be deterred from going to testify through fear of suits. And it is because testimony given by a witness in open court is considered so much more valuable than any other kind of testimony by a witness, that the courts have been so liberal in extending his privilege.

See also 38 Amer. rep. and note; 24 Alb. L. J, 134-529, and 25 Alb. L. J. 424-444, for full citations of authorities.

The case of Rorebacker, 15 Mich., 537, was cited by defendant's counsel as establishing a doctrine the reverse of that above stated, but in that case the person served with process resided in the county where the court from which the process issued was held. It is true that the court intimated that the rule of

privilege extended only to cases of arrest, still, in view of the weight of authority, and as the facts did not require the expression of any opinion upon the point in question, the decision must be considered as applying to the facts of that case.

The motion must be granted with $10 costs.

H. C. Wisner for the motion.

Levi T. Griffin contra.

(March 5, 1883.)

Wayne Circuit Court—In Chancery.

JOSEPH KIRSCH

vs.

CONSTANZA KIRSCH.

Chancery Practice—Rule 47.

A party who accepts the costs taxed by the court in making an order allowing an order of reference to be entered *nunc pro tunc*, after the time limited by Chancery Rule 47 has elapsed, thereby waives his right to complain of such order.

Complainant moved the court for an order of reference and to take testimony before a circuit court commissioner in a cause pending in a court of Chancery, to be entered *nunc pro tunc*.

Defendant objected to such order as in violation of Chancery Rule Number 47, requiring such order to be entered within 30 days after filing replication in the

cause, inasmuch as forty-two days had elapsed since filing said replication, and no excuse being offered by complainant for neglecting to enter said order within the time required by the rule.

The Court, CHAMBERS J., granted the motion on the payment of five dollars costs as the terms of the order. The terms of the order were complied with.

Defendant, not satisfied with the rulings of the court below, applied to the Supreme Court for a writ of mandamus, compelling the court below to vacate said order.

At the hearing of motion for mandamus before the Supreme Court, held, that, as the order complained of was granted upon terms, and the terms had been accepted by defendant, she, (defendant), must be deemed to have waived her right to complain of the entry of the order, and the motion for mandamus was therefore denied.*

(May, 1881.)

A. M. Henry for Complainant.

G. F. Beasley for Defendant.

*Perhaps the case should be entitled in the Supreme Court. No opinion was filed in that court in the matter of the application for writ of mandamus, though the reason for their refusal to grant the writ is correctly stated above.

Wayne Circuit.

PATRICK TREGENT

VS.

ABRAM MAYBEE ET AL.*

Amending Narr—New Cause of Action.

A declaration cannot be amended by adding a new count, when the proposed amendment embraces a cause of action entirely distinct from that contained in the original declaration.

This case was in Supreme Court, (Maybee vs. Tregent, 47 Mich., 495.)

The case coming on for trial again in the Circuit, the special count was abandoned, and two new counts were submitted as an amended declaration.

The only question that defendant raised on the motion to amend was that the new counts introduced new causes of action.

The original bill of particulars is as follows:

"One hundred and eighty dollars cash obtained by the plaintiff at Detroit Oct. 18th, 1878, through John Baker by the said defendant upon the false and fraudu-

*Tregent vs. Maybee has been on the Circuit Court docket for several years. Several trials have taken place, and several motions have been heard.

†The Supreme Court has also passed upon it. We give it a place here partly as a case involving an important principle of practice, and partly as a portion of the legal history of the Wayne Circuit.

lent shipping receipt set forth in the declaration in this cause, and upon the false pretense that said defendants, one of whom, as agent of the R. R. Co. had fraudulently issued said receipt to themselves, had shipped the flour as per said shippers' receipt, also for the interest thereon, and ten dollars on the money so advanced."

The plaintiff contended that the following two counts contained no different causes of action from that stated in the above bill of particulars.

"For that whereas heretofore, to wit, on the 18th day of October, 1878, at the city of Detroit, in said county, the said defendants, who were manufacturers and shippers of flour at Maybee Station, held a shipper's receipt or bill of lading, a copy of which is hereto annexed, as a part of the declaration, and marked 'A,' from the C. S. R'y Co., purporting that said defendants had that day shipped by said railway company to themselves at Detroit aforesaid sixty barrels of flour marked and branded thus:

which document was not genuine, but was fraudulently made by said defendants themselves, and was fictitious, false, and void; and that said flour had not been shipped by said defendants by or upon the said railway as represented in said document, and the said defendants then and there, with the intent to cheat and defraud whoever should receive the said document for value, and to cheat and defraud the said plaintiff, and pretending to act as in the regular course of busi-

ness, and with the purpose of wrongfully obtaining money thereon of the plaintiff and of defrauding said plaintiff, indorsed said receipt in blank as a genuine document, and fraudulently and wrongfully caused the same to be negotiated and delivered to said plaintiff in consideration of a large sum of money, to wit, one hundred and ninety dollars, which the said plaintiff then and there upon the faith of said instrument, and relying upon the genuineness of the said document and of the representations and undertakings therein contained, and especially of the statement that said flour had been shipped as before stated, paid at the request of the said defendants and to their use and benefit; and by reason of the premises the defendants became and were then and there liable to repay to the said plaintiff the sum of money so fraudulently obtained from him, and being so liable they then and there in consideration of the premises promised so to do.

And for that whereas also, heretofore, to wit, on the day and year aforesaid, at the city and county aforesaid, the defendants had a certain other shipping receipt or bill of lading of the same tenor as the one before mentioned, for sixty barrels of flour marked thus:

Which they had that day shipped by the said railway, consigned to themselves at Detroit, and they then and there indorsed the said document in blank, and caused and procured the same to be negotiated and transferred so endorsed to the plaintiff for value, and thereby and

in consideratien thereof, and of the flour therein described, said defendants obtained and received of and from the plaintiff a large sum of money, to wit, the sum of $190, being the value of said flour; but the said defendants afterwards, to wit, on the day and year aforesaid, seized and took possession of said 60 bbls. of flour and converted the same to their own use, so that the consideration for the money so obtained and received by them of the plaintiff as aforesaid wholly failed, by reason of which premises said defendants became and were then and there liable to repay the said plaintiff the said sum of money, and being so liable, they then and there in consideration of the premises promised so to do."

JENNISON AND SPEED, J. J.: Decided that the second count clearly stated a new cause of action if it stated any, and that they would admit the first count, although they had grave doubts about admitting even that count.

S. E. Engle for Plaintiff.

James H. McDonald for Defendant.

(April, 1883.)

Bay Circuit.

JOHN STEWART

vs.

COLUMBUS V. TYLER.

Evidence Must Harmonize With the Narr.

A party suing for negligent injury is bound to set forth in his declaration the material facts relied on as his cause of action and to prove the same combination of circumstances.

Pleadings are for the purpose of informing the parties and the court of the precise subject of the controversy: their wording must be precise. (49 *Mich.*, 184.)

Trespass on the case for malpractice, claiming $20,000 damages.

Plea—general issue.

Plaintiff's counsel, in his opening statement, said:

"The plaintiff on September 14, 1878, was accidentally thrown from a carriage and sustained a compound comminutee fracture of the left leg below the knee. The negligence we offer to prove was:

1. An improper splint was used.

2. The detached pieces of bone, spicula, should have been removed from the wound, and

3. The large bone which protruded through the flesh at the time of the accident, should have been cut off."

The leg was amputated Jan. 15, 1879.

Plaintiff was sworn in his own behalf, when defendant's counsel objected to any evidence under the declar-

ation,* as the case stated in the opening was not the one set out in the declaration. Citing F. & P. M. R'y Co. vs. Stark, 38 Mich., 714; Marquette, Houghton & Ontonagon R. R. Co. vs. Marcott, 41 Mich., 433; and Batterson vs. Chicago & Grand Trunk R'y Co., 13 N. W. Rep., 508. (49 Mich., 184.)

Objection sustained.

Plaintiff voluntarily submitted to a non-suit, which was set aside on payment of costs.

(Dec. 26, 1880.)

Simonson & Gillett and *Hatch & Cooley* for Plaintiff.

Thos. A. E. Weadock, A. C. Maxwell and *Benton Hanchett* for Defendant.

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*DECLARATION.

STATE OF MICHIGAN,
THE CIRCUIT COURT FOR THE COUNTY OF BAY, } ss.
COUNTY OF BAY,

John Stewart, plaintiff herein, by Simons & Gillett, his attorneys, comes into court according to the form of the statute authorizing the commencement of suit by declaration, and complains of Columbus V. Tyler, the defendant in this suit, of a plea of trespass on the case.

For that whereas before and at the time of the committing of the wrongs and grievances by the said defendant, as hereinafter next mentioned, the said defendant held himself out to be and was a physician and surgeon.

That on or about the 14th day of September, A. D. 1878, said plaintiff met with an accident whereby the left leg of plaintiff was greatly injured and the bones thereof were fractured below the knee.

That thereupon and on or about the said 14th day of September aforesaid, at Bay county aforesaid, the plaintiff employed said defendant as such physician and surgeon to attend upon the plaintiff and endeavor to set, reduce and cure the said leg of said plaintiff for a reasonable reward to be thereafter paid by plaintiff to said defendant.

The Bay Circuit---In Chancery.

THE TITTABAWASSEE BOOM COMPANY

vs.

ANDREW CUNNING.

Obstruction of Navigation—Rights of Boom Companies—Riparian Rights —State Powers Over Water Ways.

The Saginaw River is one of those great highways of navigation and commerce upon which the trade and commerce are carried on between the several States.

While the State cannot confer the power to entirely obstruct the navigation of this river, it may authorize the construction of bridges which, to some extent interfere with the commerce between the States, suitable arrangements being provided for the safe passage of vessels through them.

That defendant then accepted and entered upon such employment and retainer to wit, on the day and year aforesaid, at Bay county aforesaid, and thereupon it then and there became and was the duty of said defendant to receive and use ordinary and reasonable care, skill and diligence in endeavoring to reduce said fracture and to set and cure the leg of said plaintiff.

Yet the said defendant, not regarding such his duty, or his said retainer and employment, but contriving, and intending to injure and aggrieve the said plaintiff in this behalf, did not nor would use and exercise ordinary and reasonable care, skill and diligence, endeavoring to reduce said fracture and set and cure the leg of said plaintiff, in an ordinarily skillful, proper and diligent manner, but on the contrary thereof, the said defendant treated and attended to said plaintiff and the fracture of his said leg in so improper, unskillful and negligent a manner in not using the ordinary and proper means and remedies to reduce said fracture and to set and cure said leg, and in not using proper means and remedies to reduce said fracture and set and cure said leg that the said plaintiff became weak and lost flesh, and the wound occasioned by said fracture became sore and festered, and the bone of his said leg diseased, and by reason of such default it became and was necessary

Rafting logs is not engaging in commerce between the States, though incidentally connected with it.

A dock line established under the authority of the State must be presumed to be a reasonable one. But if it interferes only with commerce within the State, the State courts cannot interfere with it.

By the Court, GREEN J.: The bill in this case was filed to restrain the defendant from extending his dock, situate on the east side of the Saginaw river a little above Twenty-third street bridge, out into said river so as to obstruct the free navigation thereof with rafts, etc.

The bill sets forth facts indicating the extent and importance of the plaintiff's business of booming and delivering of logs to owners and mills, and the neces-

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thereafter, to wit, on or about January 13, 1879, at Bay City, county aforesaid, to amputate and cut off the said leg of said plaintiff, whereby he, the said plaintiff, suffered and underwent severe pain, and became and was permanently injured and disabled, and was hindered and prevented from performing and transacting his affairs and business by him to be performed and transacted for a long space of time, to-wit, thenceforth, at Bay county aforesaid. Thereby he sustained great loss and damage, to wit, ten thousand dollars, and was also by reason thereof forced and obliged to pay out and expend a large sum of money in and about endeavoring to be cured of said fracture and amputation in medical attendance, medicines and other expenses, to wit: The sum of one thousand dollars, and was otherwise greatly injured and damnified in this behalf at Bay county aforesaid to wit, to the plaintiff's damage, twenty thousand dollars.

And also for that whereas, before and at the time of the committing of the wrongs and grievances by the said defendant hereinafter next mentioned, he the said defendant claimed to be and was a physician and surgeon, and held himself out to the public as such.

That on or about the 14th day of September, 1878, the said plaintiff met with an accident wherein and whereby the left leg of said plaintiff

sity of an unobstructed and free navigation of the river at the point in question for the passing of their rafts down the river to mills below the said bridge, etc.

It states that prior to 1882 defendant had driven piles out in front of said dock extending 75 feet into the river, and that since January, 1882, he had driven piles out in front of said dock 92 feet beyond the outer line thereof, thus preventing the free navigation of the stream by the complainant, and that he threatens to continue the same 11 feet further out, so that his entire dock would extend over 170 feet from the shore and more than 20 feet beyond the east end of the east span of the bridge.

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was greatly injured, and the bones thereof were fractured below the knee. That thereupon, and on or about said 14th day of September aforesaid, at Bay county aforesaid, the said plaintiff retained and employed the defendant as such physician and surgeon, to attend the said plaintiff, and to treat and endeavor to set and cure the said leg of said plaintiff, for a reasonable reward to be therefor paid by said plaintiff to said defendant.

That the said defendant then and there accepted and entered upon such employment, and agreed to reduce said fracture and to set and cure the said leg of said plaintiff.

That thereupon it became and was the duty of said defendant to treat and endeavor to set and cure the plaintiff's said leg, and reduce said fracture in an ordinary, skillful and diligent manner, yet the said defendant not regarding his said duty, nor his said employment, but contriving and intending to injure and aggrieve the said plaintiff, so conducted himself in an ignorant, unskillful and negligent manner in that behalf in that he did not nor would use the ordinary and proper means and remedies, and did not nor would use any means or remedies, to reduce said fracture, and to set and cure said leg of said plaintiff, whereby the said fracture became set, and the wound occasioned thereby

That these rafts are made up of five strings and are about 80 feet wide and in towing down they require a space of greater width on account of the winds, currents, etc. At the time the bill was filed no dock line had been established by the common council at the place in question, but after the filing of the original answer of the defendant, such a line was established and this fact is set up in a supplemented answer. That line is some 4 or 4½ feet further out into the stream than the dock spiles have been driven, and the defendant now claims the right to extend his dock to that line but no further. Will the dock so extended constitute such an obstruction to the navigation of the river as to be a nuisance which this court can restrain or abolish?

The Saginaw river is undoubtedly entitled to be classed as one of those great highways of navigation

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became sore and festered, and the bones of the said plaintiff's left leg diseased and he, the said plaintiff, lost flesh and strength, and by reason of such default and neglect of said defendant, in order to save plaintiff's life, it became and was necessary thereafter, to wit, on or about January 15th, 1879, at Bay county aforesaid, to amputate and cut off the said leg of said plaintiff, whereby the said plaintiff suffered and underwent severe pain, and became and was permanently injured and disabled, and was hindered and prevented from performing and transacting his ordinary affairs and business by him to be performed and transacted for a long space of time, to wit, thence hitherto, to the great loss and damage of said plaintiff, to wit: Ten thousand dollars, and was also by reason thereof compelled to pay large sums of money in endeavoring to be cured of said fracture, and said amputation, so occasioned by said defendant's default and neglect, to wit: One thousand dollars, and said plaintiff hath been and still is, by reason of the premises, otherwise greatly injured and damnified, to wit, at Bay county aforesaid, to plaintiff's damage, twenty thousand dollars, and therefore he brings suit, &c.

SIMONSON & GILLETT,
Plaintiff's Attorneys.

and commerce upon which trade and commerce are carried on between the several states. The government has expended money in improving its capacity for navigation, both at its mouth and several miles above where the dock in question is situated. During the season of navigation vessels of large and small size are constantly passing up and down carrying passengers and freight in both directions and many of the larger vessels transport lumber, salt, etc., from the Saginaws and Bay City to other states and bring to them from other states coal, stone, and often freights and merchandise. It is not shown that the defendant's dock in any way obstructs or impedes the navigation of the river for such purposes. The only obstruction or impediment to navigation complained of or shown by the testimony is the inconvenience to which the dock in question subjects the plaintiff in passing its rafts down below the Twenty-third street bridge, and this inconvenience results mainly from the width of the rafts, as they are usually made up, and it is concluded that if such rafts were made 4 strings in width instead of 5, there would be sufficient room for their passage without any slight inconvenience on account of the dock. But the plaintiff claims that, in order to deliver to the mills below the bridge, the quantities of logs which their business requires, and at a reasonable cost, it is necessary that these rafts shall be made up as wide as they are accustomed to make them, and that they cannot, without great damage to the largest manufacturing interests of the valley, reduce their width, and that so made up the plaintiff is subjected to delay and additional expense in getting its rafts by this dock and through the

bridge. This difficulty results from the fact that in approaching the span of the bridge through which the raft passes the tug must be detached and pass through between the swing piers before it can be taken around, and again attached. The raft is liable to double up between McLean's and defendant's docks and between defendant's dock and the bridge, and this is especially so in case of an unfavorable wind. It does not seem probable that if the bridge were not there, or if the tug could pass through it without being detached from the raft, there would be any essential difficulty on account of the dock, or if there was a continuous line of dockage from McLean's dock to the defendant's or what has now been fixed as the dock line under the authority of the legislature, or if a boom was placed there and so constructed that rafts might slide along its outer edge there would not seem to be any reasonable ground to complain, and in view of the fact that before the defendant's dock was extended rafts were liable to be, and sometimes were driven upon the old dock and doubled into the slip on the north side of it, there seems to be reason to believe there would be less difficulty in passing that point than before the extension.

The space through which the rafts pass under the bridge between the shore pier and the east swing pier is 134 feet, according to the diagram exhibited, and the defendant's dock is about 250 feet above the bridge, and but for the other difficulties in passing the bridge above referred to, there would be ample room for the plaintiff's rafts. If docks were constructed continuously upon the line established by the common council down to or near the bridge, the space still left for rafts to

pass would be 91 feet, or 11 feet wider than the rafts, and in that case would probably be sufficient for that purpose.

As to the effect of establishing a dock line in front of the defendant's premises it is objected that this being a river of the character above intimated, the state has no power to authorize its obstruction by docks which obstruct navigation. It may be conceded that the state can confer no power to entirely obstruct its navigation, but it can authorize the construction of bridges, which, to some extent, interfere with even that which constitutes commerce between the states, suitable arrangements being provided for the safe passage of vessels through them. But there are considerations which may distinguish the business of the complainant from that of the general commerce of the river. The rafts are made up once for all and may be made of any length or width that will fit the condition of the navigation. They are brought to the mills along the stream, broken up, and the timber manufactured into lumber. Their navigation is no part of the trade or commerce between the states, though it may be said to be connected with it, and so is the floatage of logs down the small streams, over which the state has exclusive control.

A dock line having been established under the authority of the state, it must, I think, be presumed to be a reasonable one, and if not, as it effects only this species of navigation which is confined exclusively to the river within the state, I am not prepared to say that this court can interfere with it. The establishing of

this line, beyond which owners are not allowed to extend their docks, by implication allows them to build them out to that line.

When this bill was filed no dock line had been established, and the defendant, apparently supposing a dock line had been fixed some 11 feet further out into the stream than the spiles had been driven, was proceeding and intended to extend his dock out to that point, and he so stated to the complainant's agents or employees This would have been unlawful and injurious to the complainant, and a temporary injunction was properly allowed. Since, however, the establishment of such line it appears the defendant had no intention of going beyond it and he cannot do so without violating an express provision of the statute.

The bill must therefore be dismissed, but as there was ground for filing it no costs will be awarded to the defendant.

(January 4, 1883.)

Durand & Emerick for Complainant.

John Moore of Counsel.

T. A. E. Weadock for Defendant.

Superior Court of Detroit.

JACOB B. FOX

vs.

WILLIAM GRAHAM.

Limited Partnership.

One who deals with a partnership with full knowledge of the contract between the parties, has notice, or deals with reference to that contract.

On the trial the verdict was for defendant.

Plaintiff moved for a new trial.

The remaining facts sufficiently appear in the following opinion of the Court, CHIPMAN, J., in granting a new trial:

Fox sued Graham as payee on a promissory note made by a firm styled Eakins & Co., on which he was an indorser, and which he paid.

Eakins, Thomas Griffin and Fox attempted to form a limited partnership under the statute, and supposed they had done so. They entered into business, and after a time Eakins bought Griffin out with the knowledge and consent of Fox, who continued, as it is claimed, in the business with Eakins. Section 1579, Compiled Laws, prescribes that every alteration in the names of the partners, if the partnership is carried on afterwards, shall constitute it a general partnership, unless the limited partnership is renewed in the manner provided by the statute. Eakins and Fox did not

make this renewal. If they continued the business, their failure to do so constituted them general partners.

Pierce vs. Bryant, 5 Allen, 91.
Smith vs. Argall, 6 Hill, 480.

The court in Pierce vs. Bryant says:

"It is a mistake to suppose that in adopting from the civil law the principle of a special or limited partnership, the Legislature intended to graft also on the stock of the common law all the rules of construction which are applied to such a contract in those countries where it forms a part of the regular system of public law. To have done so would have been to make a great inroad on the well settled doctrines of the common law applicable to partnership, especially in that fundamental law, that he who enters into a contract by which he is to contribute capital and share in the profits of a firm, shall be liable *in solido* for its debts. The intent of the statute is to relax this rule only on certain conditions, and within fixed and prescribed limitations. If these are not fulfilled, or are disregarded, then the statute applies vigorously the rule of the common law by subjecting all members of the firm indiscriminately to the liabilities of general partners."

Upon the trial the certificates of partnership required by Section 1570, Compiled Laws of 1871, was offered and objected to on the ground that the note purported to be a partnership note payable to Graham, and that Fox sues the payee here as his indorser, and that, therefore, it is not material what relations Fox bore to the maker.

This would have been true if the note, which was paid by Fox in his capacity as indorser, had been for the benefit of Graham, and not for the benefit of Eakins & Co.; but that matter was submitted as a question of fact to the jury. In this motion for a new trial it is insisted that the certificate lacks essential elements required by the statute. I do not doubt that, but the objection was not made on the trial. It is urged that now it is a matter of discretion whether it shall be considered now. That is true if it would avail anything, but while the parties failed to establish a limited partnership they performed a certain act—entered into an arrangement, which was followed by their conduct of a business. They intended a limited partnership, but did not consummate it because they did not comply with the statute. Still, their agreement for that purpose was the one under which they actually carried on business. It was part of the transaction between them, and in that light is indispensible as history of the case.

Section 1575, Compiled Laws of 1871, prescribes that "no such partnership (limited) shall be deemed to have been formed until such certificate, acknowledgment and affidavit shall have been filed as above directed." It appears that the certificate was not acknowledged. Therefore the acknowledgment required by statute could not be filed, and the partnership could "not be deemed to have been formed." The attention neither of court nor counsel was called to this fact on the trial, which proceeded on the theory that the steps to form a limited partnership had been pursued and that the withdrawal of Griffin, under the circumstances, *ipso facto*, made Fox & Eakins general partners. It is plain now

that there never was a limited partnership, and Section 1575 does not prescribe that failure to file the certificate, acknowledgment and affidavit shall constitute the partnership a general one. It does prescribe that certain false statements in the certificates shall have that effect, as paragraph 1579 prescribes that failure to renew in a certain manner shall have that effect. Clearly, if all that had been done was the abortive attempt to comply with the statute, no relations would have existed between the parties to it; but it was followed by action—an embarkment in the very business contemplated in that attempt. It is now contended that the inquiry should start from the premises that there never was a special partnership, instead of that there was, and that, in connection with this, the fact that Graham knew that Fox claimed as between him and Eakins to be subject to only limited liability, ought to have been submitted to the jury. In a word, the principle is involved, that one who deals with a partnership with full knowledge of the contract between the parties, has notice, or deals with reference to that contract.

While I am certain that on the theory adopted by counsel of the validity of the limited partnership the withdrawal of Griffin made Eakins and Fox general partners, I am also certain that the non-existence of the limited partnership devolved on the court the duty of submitting the true relations of Eakins and Fox as a matter of fact to the jury, for them to determine by their conduct subsequent to the attempt to form a limited partnership and what those relations actually were. I think the record as now scrutinized shows that the case

was tried upon a wrong theory, in which both counsels participated.

A new trial is granted without costs.

(May 2, 1880.)

Griffin & Dickinson for Plaintiff.

Moore & Moore for Defendant.

Wayne Circuit Court—In Chancery.

ELIZABETH BROWN

vs.

WILLIAM BROWN.

Divorce—Motion to Dismiss Complainant's Solicitor—Collusion—Bob. McKinney.

The complainant, by the advice of a few persons of that class, who hang on the verge of courts of justice, knowing just enough of the forms of law to make their knowledge (?) dangerous, advised complainant to get rid of Maj. Penniman, her solicitor, so that the collusion desired in the case might be consummated without interruption.

Maj. Penniman's argument in opposition to the motion was powerful in eloquence, and perfectly scathing in sarcastic denunciations of Mrs. Brown's lay advisers, Bob. McKinney *et. al.*

The following is the opinion of the Court, REILLY, J., in overruling the motion:

On the 30th day of November, 1875, the complainant in the cause filed her petition praying for a decree of divorce from the defendant. In the petition she sets up her marriage to the defendant at Southfield, in Oakland county, Michigan, in 1848; that since said marriage the parties had resided in this county, and have had seven children born unto them, all of whom are now living, their respective ages ranging from six to twenty-six years; and alleging ill-treatment and intemperance on the part of the defendant as grounds for which the decree of divorce is prayed.

On motion for alimony pending litigation, George H. Penniman, Esq., appearing for complainant, and Messrs W. A. Smith and Edward Minock for defendant, a solicitor's fee of $30 and the sum of $5 per week alimony were ordered. In determining the amount directed to be paid the court took into consideration the very emphatic representations of counsel for defendant that "of their own personal knowledge he was not guilty as charged," and the court supposed and hoped that the difficulties between the parties would be amicably adjusted and the suit withdrawn.

Last Monday, however, a motion was made on behalf of complainant, asking that her solicitor's name, Maj. Penniman, should be expunged from the records, and the motion was supported by alleged facts, to which it is immaterial here to refer.

That every litigant has the right to change solicitors or attorneys as often as fancy dictates I had supposed was a generally admitted doctrine. It is true that courts

will require that the just claim of the discarded solicitor or attorney for services rendered should be satisfied, but further than that I am not aware that courts care to go. In the present case, as this mere act of justice has not been performed or even attempted, and in view of the averments contained in the affidavit of Maj. Penniman, I decline to interfere at this time, and the motion is denied.

I now proceed to the consideration of a much more important point connected with the case, and will preface my observations by a quotation from Mr. Bishop's chapter on collusion, in his work on marriage and divorce. He says: "Collusion, like connivance, will not be presumed without proof, or matter appearing from which it may be affirmatively inferred." The case at bar, in my opinion, is one which demands the most rigid scrutiny of every part of the evidence presented, or which may hereafter be presented.

I will again quote from the same author: "Collusion relates primarily, though not exclusively, to what is done out of court preparatory to a deception to be practiced on the tribunal. But, however just a cause may be in itself, if parties corruptly collude in the management of it before a tribunal, so that in reality both are plaintiffs, while by the record the one appears as plaintiff and the other as defendant, this, in reason, and it is believed in point of authority, will, as collusion, bar proceedings." Lord Penzance, speaking with reference to the facts proved before him to establish collusion said: "I see no impropriety in a husband making his wife a reasonable allowance whilst a suit is pending in

order to save the expense of an application to the court for alimony. If that evidence stood alone, I should hold that it is not sufficient to prove the charge of collusion, but the evidence goes much further. It amounted in substance to this: That the petitioner said to the respondent 'if you don't appear I shall get a divorce cheaper than if you do, therefore keep quiet and I will give you some money when the decree is obtained, and I will do no harm to the correspondent.' If that is not collusion I do not know what is."

Apply the principle so well illustrated to the case at bar. With the statements of counsel for the defendant, that they had a perfect defense to this action, fresh in my memory, I proceeded to examine the affidavits on file, and from them I learn that the parties are negotiating as to the amount of alimony which on the one hand shall be paid and on the other hand accepted, and "that the defendant is not disposed to contest the case very closely, provided the question of alimony can be settled in a satisfactory way." That is to say, if the complainant agrees to take such sum as the defendant is willing to pay, the case goes by default and he will not defeat her bill by proving his defense. In the language of Lord Penzance, "If this is not collusion I don't know what it is."

And next comes this proposition demanding that Maj. Penniman shall be required to withdraw from the case, and he is notified that "Mr. Rob. McKinney is authorized to settle with Mr. Brown, and no one else but him has power to settle," thus taking the case from the hands of an officer of this court, amenable to this

court for his acts, and placing it in the hands of a person over whom this court can exercise no control; and this friend of complainant proposes the arrest of the defendant for perjury for the purpose of "making him come down."

If this is a fair illustration of the advice accepted by these parties I am not surprised at their utter disregard of the effect of this proceeding upon the future welfare of their sons and daughters. Instead of making an earnest effort to harmonize their difficulties and live together as husband and wife should, if not for their own sake, for the sake of their seven children they are responsible for, they seek non-professional and bad advisers, who at once commence negotiations, which, if carried out, separate this husband and wife forever, break up their family and cast a blight over the future existence of their children. It was so apparent to me that these parties were guilty of collusion that on the hearing of this motion I directed the entry of an order rescinding the former order made for the payment of alimony, and there is no doubt in my mind I would be justified in dismissing the case at the present stage on the grounds which I have indicated, but I have decided to give the matter the most careful consideration, and will postpone further action until the case comes up for final disposition.

I deem this to be a fitting opportunity to state emphatically that while courts may be powerless to stem the tide of petitioners in quest of decrees of divorce, yet this court can and will insist that the performance of every precautionary requirement of the

law shall be rigidly and strictly complied with, and that parties seeking relief shall come into court with clean hands and without the slightest taint of fraud or collusion on their garments."

Judge Reilly characterized the conduct of the persons who filed the affidavits upon which was based the motion for removal, Mr. Cushman and Wm. McKimmie, as disgraceful, and he regretted that they were not in court, where he might read them a wholesome lesson. He ordered the affidavits stricken from the files.

Judge Reilly's opinion was highly commended by the members of the bar who were present.

G. V. N. Lothrop, C. I. Walker and Levi Bishop each rose in turn and thanked the court for the stand it had taken and the just sentiments it had spoken.

Mr. Lothrop said that he was thankful that such an atmosphere pervaded this court, and he believed that great good would result from it. He considered that the custom of granting divorces on the most flimsy pretexts, which has become so common, has a blighting influence on society, and, to say the least, of doubtful legality.

Mr. Walker thought it high time that parties who aid in disturbing the domestic relations should be most severely rebuked. The court could do no more just or commendable act than to put its foot on the system of collusive divorce.

Mr. Bishop commented with equal severity on the outrageous system of granting divorces that has became

prevalent. He would make a divorce a difficult thing to procure, and a decree to be granted only in the most extreme cases. He would make the proceedings in divorce cases as public as possible. He condemned the practice of keeping the papers and proceedings obscure from the public and suppressed from newspaper reporters.

Mr. Penniman thanked the court for the expressions of confidence in his honesty of purpose and integrity, and said again that he would be perfectly willing to step aside from this case to give way to any respectable solicitor.*

(Feb. 6, 1876.)

*This case continued to occupy the attention of the court for several years, with varying fortunes to the respective parties. On April 3d, 1876, the court ordered defendant to pay complainant $6 per week as alimony for two years. Growing out of this, and of a contest over a minor child of the parties, there were proceedings for contempt; and attachments, executions, etc., were issued.

J. Logan Chipman succeeded Maj. Penniman as solicitor for complainant. He afterwards stipulated that Crofoot & Kudner might enjoy that privilege. W. A. Smith and E. Minock were also in turn superseded (by stipulation) by John G. Hawley.

St. Clair Circuit.

DAVID J. STEWART

vs.

FRANCIS J. BARBER.

Process—Short Summons.

A short summons issued June 28, served June 29, and returnable July 1, is served in time.

In computing the time the day of service is excluded and the day of the return is included.

The plaintiff in certiorari, who was also plaintiff below, commenced suit by summons against defendant in justice's court. The summons was dated and issued June 28, returnable July 1, and was personally served June 29.

Of the proceedings had on the return day, the justice makes the following return in answer to a writ of certiorari:

"That on the first day of July 1876 at 10 o'clock A. M. case called; parties appeared before me; defendant's att'y asked to discontinue the cause on the ground the summons was not served two full days from the time of service to the time of appearance. Plaintiff objected to motion for discontinuance. Motion sustained and cause discontinued with costs "75 cts"

Dated and signed by the justice.

The plaintiff, evidently understanding that a judgment of nonsuit and for costs had been rendered against

him, brings the case to this court by certiorari, and the case is argued by counsel on both sides and submitted upon that theory or understanding.

HARRIS, J.: The question is whether on not, under Comp. Laws, Section 5264, two full days must elapse between the day of service and the day of return of a short summons.

The rule adopted by our Supreme Court seems to be to exclude the day of service and include the day of return. 23 Mich., 293.

Under this rule the service in this case was good, and the judgment of the justice, *if it is a judgment*, must be reversed, with costs.

(December, 1876.)

E. R. Stevenson and *F. Whipple* for Plaintiff in Certiorari.

C. R. Brown and *T. J. McSweeney* for Defendant in Certiorari.

St. Clair Circuit.

THE PEOPLE EX REL. ALBERT DOTA

VS.

MALCOLM McKAY.

Justice Court—Mandamus—Adjournment.

Circuit Courts have power in certain cases to issue the writ of mandamus to justice's courts.

After a cause in justice's court is adjourned, the justice can enter no judgment prior to the adjourned day, except, perhaps, by consent or after notice.

Where the justice, prior to the adjourned day, has assumed to enter judgment of discontinuance on the application of plaintiff, and refuses to do anything on the adjourned day, mandamus is the proper remedy to compel him to act.

But the Circuit Court will not direct what action shall be taken or judgment rendered.

On the 6th day of July last the respondent, a justice of the peace of the city of Port Huron, issued a summons in favor of Daniel J. Stewart, a non-resident of this county, against this relator, Albert Dota. This summons was returnable July 10, and was duly and personally served. On the return day the parties appeared by attorneys and the cause was adjourned, and afterwards several adjournments were had, and finally it was adjourned from July 25 to August 15.

On the 31st day of July the plaintiff by his attorney appeared before the justice, and as the justice returns, "withdrew and discontinued said cause," and thereupon the justice, claiming to act under Comp. Laws, Section

5380, rendered a judgment against plaintiff for costs, taxed at $2.35, being all the costs, so far as the justice was then informed. At the time of this entry neither the defendant nor his attorney was present.

On the adjourned day, August 15, the defendant appeared ready for trial, and after waiting an hour, the plaintiff not appearing, the defendant asked for judgment, and that his costs be taxed.

The justice refused to take any further proceedings or cognizance of said cause, for the reason, as he then said, that said cause was not then pending before him.

Thereupon the defendant, the relator herein, applied to this court for a mandamus requiring the justice to render such a judgment as should have been rendered on said adjourned day, and on the facts as they then appeared.

HARRIS, J.: The first point raised is, that *this* court has no authority to issue the writ asked for, and McBride vs. The Common Council of Grand Rapids, 32 Mich., 360, is relied on to support this position. But this is an authority quite the other way. The court says, on page 364, "It" (the writ of mandamus) "is a very proper writ to enable the Circuit Courts to give effect to their appellate and supervisory authority in some cases, and is often made use of for such purposes." And in arguing the case and reviewing the authorities, the court says, on page 367, "These considerations lead me to the conclusion that the constitution does not give to the circuit courts jurisdiction of the enumerated writs, except

for the purposes of jurisdiction which in general terms is conferred."

And the Constitution, Art. 6, Section 8, gives to the courts supervisory authority over inferior jurisdictions—not over common councils or State or county officers, for they are in no legal sense inferior courts or tribunals.

I have no question, then, but that upon a proper showing and in a proper case this court may issue a writ of mandamus to a justice of the peace, and the only question is, do the circumstances of this case call for the interposition of this court by this writ.

The cause having been adjourned from July 25 to August 15, the justice in the meantime could do nothing in the case. His action on the 31st of July was illegal and utterly void. Section 5380 furnished no justification for the action taken. A clear legal duty rested upon the justice to take some action or render some judgment on the adjourned day. This legal duty the justice, on request, refused to perform, and mandamus is the proper remedy to compel him to discharge his duty. 26 Mich., 22. Otherwise this is a denial of justice.

The case stood regularly for hearing on August 15, and on that day, if the plaintiff failed to appear, it would seem as though the only thing the justice could do was to render a judgment of nonsuit and for costs.—29 Mich., 199.

But it is not for this court to say what judgment he shall enter, or what action he shall take.

Let a writ of mandamus issue requiring the justice to render such a judgment, as of the date of August 15, or take such other action, as the facts then before him required.

Everything tends to show that the justice acted in entire good faith, and no award of costs can be made against him.

(December, 1876.)

C. R. Brown and *T. J. McSweeney* for Relator.

E. R. Stevenson and *F. Whipple* for Respondent.

St. Clair Circuit.

IN THE MATTER OF JOHN F. KELLEY.

Habeas Corpus—False Imprisonment.

The complaining witness in a criminal case is not liable to an action for false imprisonment at the suit of the accused during the pendency of the prosecution.

On or about June 15, 1876, the petitioner, John F. Kelley, made a complaint in due form to a justice of the peace against one Alexander, charging him with perjury. A warrant was issued; defendant was arrested, examined and held for trial. At the August term of court, upon being arraigned, he moved to quash, without assigning any reasons. The motion was denied. He then declined to plead, and by order of the court a plea of not guilty was entered. Thereupon, by consent, the

cause was continued over the term, and the bail already given was respited.

On the 26th of August, Alexander commenced a civil suit against Kelly by capias to recover damages for "malicious prosecution and false imprisonment," as is alleged in the writ.

The affidavit attached to the writ sets up that Kelly, without any just reason and for no probable cause, made an unjust and unfounded complaint, and therein falsely and maliciously accused him (Alexander) of being guilty of willful and corrupt perjury; that on such complaint he (Kelly) procured him (Alexander) to be arrested; that he was wrongfully arrested and falsely imprisoned on and for such false and malicious charge; that he was compelled to appear before the justice, and was examined and held to answer in the circuit; that thereby he has suffered in his good name, been put to expense and trouble, and claims damages $20,000.

Upon this affidavit the commissioner endorsed upon the writ an order that the defendant Kelly be held to bail in the sum of $5,000.

Kelly was arrested, and made his application in due form for a writ of habeas corpus. The writ was issued and served, and the sheriff returns that he holds Kelly by virtue of the capias, affidavit and order above mentioned.

The matter came on to be heard.

HARRIS, J.: It is claimed on the part of the petitioner that the affidavit annexed to the writ is not

sufficient in this, that it does not state that the proceedings against Alexander are at an end, and further, that the petition of this applicant and his proofs show that the proceedings are *not* at an end, and therefore it is claimed that the action cannot be maintained, or at least that there is no justification for the arrest of Kelly, and 27 Mich., 539, among other causes, is relied upon to support the claim made.

On the other side it is conceded that the position taken by counsel for petitioner is correct so far as it relates to malicious prosecution, but it is claimed that it does not apply to the action for false imprisonment, and 22 Mich., 300, is relied on. A distinction seems to be made in this case (in 22 Mich.,) between arrests in civil and in criminal causes. That was a *civil* cause. In Holcomb vs. Bonnell, 32 Mich., on page 8, the Supreme Court say, "It is supposed that decisions will be read, not as abstractions, but as propositions inseparably bound up with the particular issue and matters the court is then dealing with." Applying this rule to the case in 22 Mich., it does not support the position taken, even if a fair reading of it does in terms support it, which is doubted.

And when it shall be determined that the complaining witness in a criminal case is liable to be proceeded against for false imprisonment as soon as the accused is arrested and held for trial, the criminal code had better be repealed at once, for very few men would be willing to make complaint if by so doing they could at once be made defendants in a civil suit.

The conclusion on this application, then, is that the affidavit does not justify the holding of the petitioner,

especially when it appears, as in this case, that Alexander is now out on bail awaiting trial in the criminal case.

Petitioner discharged. See also Murphy vs. Walters, (34 Mich.)

(December, 1876.)

C. R. Brown for Petitioner.

Atkinson & Stevenson, contra.

United States District Court—Eastern District of Michigan.

THE KATE WILLIAMS.

Proctor's Liability—Marshal's Return—Warranty.

A court of Admiralty may compel a buyer at a judicial sale to complete his purchase by payment of the money.

An irregularity in the marshal failing to make return of his writ with report of his doings thereon, is healed by an order confirming the sale.

An order to pay money into court, served upon a purchaser in default, is sufficient, though his name be not mentioned in the order.

A proctor may be personally held for his bid if it be not known to the marshal for whom he is acting.

The words "her boats, tackle, apparel, and furniture," used in the writ and published notices of sale, imply no warranty of a complete outfit, nor even that all the property that once belonged to the vessel is in possession of the marshal; especially where he sells her "as she lies."

On motion for an attachment for contempt.

At the time the tug was seized upon the attachment issued in this cause, most of her apparel and furniture was in the hands of one Demass, and was never taken possession of by the marshal. A decree having passed upon the original libel, a writ of *venditioni exponas* was issued, commanding that the tug, her boats, tackle, apparel, and furniture, be sold on the 26th day of Dec., 1876. Upon this date the marshal offered the tug for sale at auction, and struck her off to Julian G. Dickinson for four thousand dollars. The deputy marshal, Mr. Blanchard, as he offered her for sale, announced publicly that he sold her "as she was," naming the property that had been seized by him as such officer, and would undertake to deliver nothing but what was upon the vessel. His announcement that he sold the tug as she then lay, was understood by Mr. Dickinson and by many others who were present at the sale. On the 17th day of January an order was made by Judge Withey, then holding this court, reciting the regularity of the proceedings, and confirming the sale. Application was repeatedly made to Mr. Dickinson to pay the money, and finally a bill of sale was executed and tendered him, with a demand for the purchase price, which he neglected to pay, but asked further time, and promised to pay whenever an order of distribution should be entered. Subsequently, but not until about the 20th of February, he claimed that his client, Mr. Murphy, for whom he had bid off the property, refused to accept the bill of sale, unless all the apparel and furniture originally belonging to the boat was turned over to him. There was about $300 in value of this

missing. On the 13th day of February, a further order was made that the proceeds of the sale of the said tug be forthwith paid into the registry of the court. A copy of this order having been served upon Mr. Dickinson, motion was made for an attachment for contempt in refusing to comply with it.

BROWN, J.: The power of the court, the practice of which is analagous to that of a court of Chancery, to compel a purchaser to perform his undertaking and pay the amount of a bid, was admitted upon the argument, and seems to be well settled by the authorities: Rohrer on Judicial Sales, secs. 152 to 146; Wood vs. Mann, 3 Sum., 318; Brasher vs. Cortland, 2 Johns. Chan., 305; Requa vs. Rea, 2 Paige, 339; Cazet vs. Hubble, 36 N. Y., 677. The purchaser in cases of this kind is regarded as making himself so far a party to the original proceeding as to render himself amenable to the process of the court to compel obedience to its orders.

It was claimed, however, in this case, that the sale was irregular, for the reason that the marshal had made no return of his writ into court, and no report of sale had been filed. Without undertaking to say whether the mere omission to file the writ and the report of sale would constitute such an irregularity as would vitiate this proceeding, it is sufficient to say that such irregularity, if it existed, was healed by the order of confirmation: 2 Dan. Ch. Prac., 1279; Todd vs. Dowd, 1 Met. (Ky.), 281.

It is further claimed, that, as the order was general, and not directed to any particular person, it must be

presumed to have been made under rule 41, and intended to operate only upon the marshal; but I apprehend such an order would operate upon any person upon whom it was served, and who was actually in default for failing to pay over the purchase price.

Further objection is made, that this court has no power to attach the bidder, inasmuch as he was acting as the agent of another party in making the purchase. Although he was a proctor of this court, it does not appear to have been known to the marshal at the time of the sale, at least by any information received by him, that he was not acting in his own behalf. After the sale was completed, he was asked to whom the bill of sale should be executed, and he replied that he would let the marshal know in a short time.

There are three cases where an agent may be held personally responsible upon his contracts:

1. Where it is not known to the other party that he is acting as agent at all.

2. Where the fact of his agency is known, but the name of his principal is not disclosed.

3. Where he exceeds his authority as agent.

Story on Agency, sec. 264–268. While, in this case, the deputy marshal may have suspected, or even have been satisfied in his own mind, that the buyer was acting only as agent, this knowledge could only have been derived from the fact that he was known as an attorney-at-law. There was nothing else to put him upon inquiry. Whether this fact was sufficient to apprise him of his

character is immaterial, for it is not disputed that he did not learn the name of his principal until some considerable time after the sale. In his affidavit, Mr. Murphy swears that he authorized Mr. Dickinson to bid for him, upon the belief and understanding that said tug, with all her boats, tackle, apparel, furniture, and appurtenances were included in the sale. If this be so, Mr. Dickinson should not have made the bid, as he was fully apprised at the time that he was buying only such property as was upon her. The marshal is certainly not chargeable with this fault. I deem this of little consequence, however, as Mr. Murphy was present at the sale, heard the announcement of the marshal that he sold her as she was, and interposing no objection to the bidding of his attorney, thereby ratified his action. It is further claimed that the purchasers were misled by the published notices of sale which designated the tug her "boats, tackle, apparel, and furniture," as the property to be sold. These words, however, imply no warranty of a complete outfit, nor even that all the property that once belonged to her is still on board or in possession of the marshal. Where the announcement is made that the tug is sold as she is, it is incumbent on the buyer to ascertain her actual condition before bidding, and any loss occasioned by his failure to do so is imputable to him. As no claim of misapprehension of the terms of sale was made in this case until nearly two months after the sale had taken place, and after repeated demands and promises to pay, there is reason at least for saying that no such misapprehension existed. While it is quite possible that Murphy might be held responsible as the

principal in this purchase, it does not follow that the agent may not also be made liable. This is one of that not infrequent class of cases where the other party may look to either the principal or the agent.

The case is very similar to that of Brasher vs. Cortland, 2 Johnson's Chan., 505, where an attachment was moved for against one Clay for refusing to complete a purchase made on a master's sale. Respondent showed cause, by stating that he was requested by one Van Cortlandt to become a purchaser in his behalf; that it was then represented to him that it was intended to appeal from the decree, and the request for him to purchase was to prevent the possibility of loss, in case the decree should be confirmed, and that he became a purchaser from motives of friendship for Van Cortlandt. Chancellor Kent decided that he must complete his purchase.

It is not necessary here to determine whether the purchaser be entitled to such of the furniture and apparel of the tug as was in the possession of Demass at the time of the sale. Under General Admiralty Rule 8, the marshal could probably have compelled the delivery to him of this property, but not having done so, it is very doubtful whether it is not now too late; still, it is no reason for the bidder refusing to complete his purchase. The announcement was distinctly made and understood, that the sale embraced only the tug and such of her equipment as was actually upon her, and he cannot now question the proceedings by reason of failure to deliver other property. While it is true, as Murphy swears, that he may have expected the marshal

to deliver all the tug's appurtenances, which it seems he had seen in Livingston's warehouse not long before, he had no reason to expect it, and took his chances of disappointment.

The practice of withdrawing from purchases thus made has become so common as to operate as a serious inconvenience. In several cases re-sales have been ordered at a greatly increased charge for advertising and ship-keeping. The attendance, too, is usually much less numerous at a re-sale, and the bidding less spirited, and the property is often sacrificed for much less than it brought at first. As observed by the Chancellor in Lansdown vs. Eldon, 14 Vesey, 512: "A purchaser ought not to be permitted to baffle the court in this way." I think the proper practice is, for the marshal, before adjourning the sale, to require an instant deposit of at least one-tenth of the amount of the bid, giving the purchaser twenty-four hours to raise the residue. The purchaser would ordinarily prefer to make good his bid rather than incur a forfeiture of his deposit.

While in this case the purchaser may have been guilty of no fraud or moral wrong, and probably acted with mere inadvertence, still, as the sale was fairly made, I think it a case where the court is properly called upon to enforce it.

An order will be entered that the purchaser pay the amount of his bid in six days, or that an attachment issue.

F. W. Clark and *Wm. A. Moore* for the motion.

R. A. Parker contra.

United States District Court—Eastern District of Michigan.

THE UNADILLA.

Proceeds of Sale—Ranking Claims.

In the distribution of proceeds of sale, claims for towage and necessaries are entitled to rank those for breaches of contract for affreightment.

On exception of Martin Bogle to clerk's report classifying claims.

The barque was originally attached upon a libel for towage. A number of other libels were filed for towage and necessaries, and one for a breach of contract on the part of the owners of the vessel in failing to deliver a cargo of coal. The barque was sold, and the proceeds paid into court. Upon an order classifying the claims, the clerk reported that the claims for towage and necessaries were entitled to rank that of Martin Bogle, for breach of contract of affreightment.

BROWN, J.: The sole question involved in the exception relates to that of priority, as between the claims for towage and necessaries, and those for a breach of contract of affreightment. The question is alluded to in one American case, viz: "The America," 16 L. R., 264, the syllabus of which indicates that the court assigned the lien of the freighter to the lowest class, but I do not find the point decided, or even discussed in the opinion.

There is an entire absence of English authority upon this point.

Valin, in discussing the French law upon this subject, says that "the right of the merchant who would seek to make this privilege available, ranks low in the order of precedence of privileged claims against the ship. The legal expenses attending a sale, the demands for pilotage and custody of the vessel, for stowage of furniture and apparel, for repairs at the last port, for the wages of master and mariners, accrued during the last voyage, for moneys borrowed by the master on his last voyage, for purchase money of ship furniture and stores remaining unpaid, for sums due to material men, shipwrights and lenders on bottomry before his last departure from port, and for premiums of insurance, being most of them justly preferred to it. The privilege of the ship-owner against the goods for his freight is of a more beneficial character.

In the commercial code of France, Art. 191, in that of Spain, Art. 599, and in that of Portugal, Art. 1307, claims of this kind are assigned to the lowest rank, immediately following those for premiums of insurance.

Emerigon, in his work upon bottomry loans, objects to this classification, and observes that "shippers whose goods have been lost or injured by other causes than by perils of the sea, ought to be ranked first, even before seamen, seeing that similar losses and damage are often occasioned by the act of the crew." It seemed to him that they ought at least to have precedence over those who have made loans before the departure of the ship, because they have no knowledge of the necessaries and moneys furnished in the

way of equipment. But he says, "It has pleased the ordinance (of Louis XIV.) not to place them in this rank."

Dufour (*Droit Mar., Vol. 1, p. 325*), thus treats of this classification: "We remark, nevertheless, that this classification is founded upon reasons more solid than simple caprice. It may be, indeed, that the fault of the crew sometimes contributes to the loss and damage of the merchandise, but we should not forget that his labor and courage often save that which remains of the pledge to which the liens attach. For this reason, in the most ancient maratime customs, the lien of mariners has always ranked that of merchants. As to lenders and material men, their co-operation in the safety of the pledge is perhaps less directly manifest, and less certain in fact, but we know that in law the presumption which militates in their favor is the same. I do not see, then, that the criticisms of Emerigon are well founded. There is, perhaps, a single class of liens against which this ought on principle to be protected, viz: that of the underwriter for the amount of his premium. For, as I have already observed, insurance is only a private affair of the debtor. Its object is the interest of the owner rather that that of the ship. Nevertheless, we can understand that the wish to encourage insurance, this gigantic lever of maritime commerce, has been able to temper in their favor the rigorous deductions of reason."

In passing upon novel questions like these, an in the absence of English and American precedents, I think the maritime law of continental Europe furnishes a

safe guide. It is for the interest of commerce that its laws be uniform.

The exceptions are overruled.

(June, 1877.)

F. H. Canfield for the original libelant.

H. H. Swan for libelant Bogle.

Superior Court of Detroit.

CHARLES WEBER

vs.

THE DETROIT DAILY POST.

Libel—Distinction Between a Man and His Hall.

Describing the disreputable character of those attending a ball at defendant's hall is not *per se* a libel upon the owner of the hall.

The plaintiff sued for damages growing out of an alleged libel committed by the defendant, which had stated that an assemblage of disreputable citizens had held high carnival at plaintiff's hall, situate in the city of Detroit.

On the trial before Judge Cochrane and a jury, the plaintiff testified that his hall bore a good reputation in the community where it was situated.

Upon cross-examination he said that the party which the *Post* characterized as an assemblage of disreputable characters was a private affair, admitting, however,

that he sat in the box office and sold tickets to all who asked for them.

The first witness for the defense was H. Smith Harris, the reporter who wrote the alleged libelous article. Mr. Harris stated that his statement regarding the character of the persons who attended the gathering was obtained from the police records.

Patrolman Shank was placed upon the stand for the purpose of testifying as to the reputation of Pinder and Cronin, who were said by the *Post* to be pickpockets.

A long argument followed as to the admissibility of this testimony unless the officer knew of his own knowledge that the men were pickpockets, thieves or bad characters.

The court held that the defense could show the reputation of the parties who attended the hall on the night in question, although Mr. Chipman argued that a man might be caught in bad company, or at one time be detected in some crime and yet have always borne a good character, citing the case of Thircott, the New York stock broker, who was recently detected in robbing houses where he had gone as a guest, and of Barker, a son-in-law of Commodore Vanderbilt, who was arrested on Sunday last for the theft of a watch. Judge Cochrane, however, said it was laid down in the old English law that it is the presumption that men visit bad places for bad purposes, no matter whether they be priest or layman.

Patrolman Shank then gave an account of his finding certain of the persons who attended Weber's in a house of bad repute, on the corner of Lafayette and Russell streets, and of arresting them for disturbing the peace.

After the testimony was in on both sides, the defense raised the legal question that no libel had been proved against the plaintiff; that describing those who were at his hall as disreputable was a very different thing from charging plaintiff with being disreputable.

After argument by counsel,

The Court, COCHRANE, J., Held: That the publication was not libelous.

Thereupon plaintiff withdrew a juror, and submitted to a nonsuit, with leave to move to set it aside.

The case was never re-tried.

(July, 1876.)

J. Logan Chipman for Plaintiff.

H. M. Cheever for Defendant.

Manistee Circuit.

JAMES STRANACH

vs.

STRANACH LUMBER CO.

Ejectment—Fraud.

Fraud and forgery in obtaining a decree in Chancery cannot be shown in an action of ejectment brought to recover lands alienated by such decree.

This was an action of ejectment. The defence was that the premises in question had been conveyed to the grantee of defendant by decree of the Court of Chancery.

The decree was offered in evidence. It was objected to on the following grounds:

1.—That the decree did not include the land in question, but had been so changed as to include the land in question.

2.—That the bill on which it was founded did not include the land in question.

3.—That the forgery and fraud appeared on the face of the record.

The objections being overruled, the defendant offered to prove these facts by a certified copy of the decree made by the county clerk nearly a year after it was filed, by the records themselves, and by other evidence.

The Court, JUDKINS, J., Held: That the decree was a finality so far as this action is concerned, and its regularity cannot be inquired into in an action at law.

(May, 1882.)

Ramsdell & Benedict for Plaintiff.

S. W. Fowler for Defendant.

Calhoun Circuit—In Chancery.

ELLEN DOE

vs.

JOHN DOE.*

Divorce—Impotence.

Impotency not a ground for divorce unless the case is incurable.

This was a bill for divorce exhibited by the wife on account of alleged incurable impotence in husband at the time of marriage.

Answer denied fact of impotence, and alleged full capacity.

This case came on for hearing on pleadings, and proofs taken in open court, January 6, 1882.

The Court, HOOKER, J., Held: That the proofs did not sustain the allegation that the impotence was incurable, and on that ground dismissed the bill.

1 Bishop on Mar. and Div., Sections 381–389.

Puterbaugh's Ch. Prac., (Power's Ed.), 527.

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*Real names of parties omitted out of deference to them.

Devenbagh vs. Devenbagh, 5 Paige Ch., 554, (28 Am. Dec., 344, and note.)

J. G. vs. H. G., 33 Md., 401; 3 Am. Rep., 183.

Powell vs. Powell, 26 Am. Rep., 774; 18 Kans., 371.

The burden of proof is upon the complainant to establish that the impotence existed at the time of the marriage.

Bishop on Mar. and Div., Section 235.

Devenbagh vs. Devenbagh, Supra.

Miner & Stace for Complainant.

Brown & Patterson for Defendant

Calhoun Circuit.

MELITA J. ROBERTS ET. AL.

vs.

THE CHICAGO AND GRAND TRUNK RAILWAY CO.

Motion for New Trial—Affidavits of Jurors to Impeach the Verdict.

Affidavits of jurors are not admissible to impeach their own verdict.

Judgment having been rendered against the defendant upon the verdict, a motion was duly entered for a new trial.

Upon the hearing, the defendant's attorney offered to read in support of the motion, affidavits of several of the jurymen, purporting to show that the jury had found the verdict contrary to the evidence and the charge of the court.

To the reading of these affidavits, plaintiffs objected, on the ground that the affidavits of jurymen are not admissible to impeach their own verdict.

The Court, HOOKER, J.; Held: That the affidavits could not be read. That it was the practice of the court upon well settled authorities not to admit such affidavits.

1 Green's Practice, 584.
Woodward vs. Leavitt, 107 Mass., 453, 9 Am. Rep., 49.
Dalrymple vs. Williams, 63 N. Y., 361; 20 Am. Rep., 544.
Apthorp vs. Backus, Kirby 407; 1 Am. Dec., 26.
Cluggage vs. Swan, 4 Binney, 150; 5 Am. Dec., 400.
Forrester vs. Guard, Breese 74; 12 Am. Dec., 141 and note.
Crawford vs. State, 2 Yerger, 60; 24 Am. Dec., 467 and note.
13 Cent. Law Jonrnal, 61, where all the cases are collected.

Motion denied.

(June 19, 1882.)

T. R. Meacham for Plaintiff.

E. W. Meddaugh for Defendant.

Mecosta Circuit Court.

ALBERT J. BLANCHARD AND
ESTELLA D. BLANCHARD

vs.

DAVID MOTT.

Infant Mortgagor—Bill to Set Aside Mortgage.

Mortgage on homestead is void, though signed by wife, unless she has attained the age of 21 years.

In this cause the bill was filed to set aside a mortgage executed by complainants to defendant, to secure the payment of a note for $140, for a pair of oxen sold by defendant to complainant, Albert J. Blanchard, on the ground that defendant, Estella D. Blanchard, was a minor, of the age of 18 years, at the time of the execution of the mortgage, which was given upon lands occupied by complainants as a homestead.

The cause came on for argument upon a stipulation as to facts, February 7, 1880, and a decision was rendered on the same day.

The Court, BROWN, J., Held: That the mortgage was void for the reason that the wife, being a minor, could not execute the mortgage as contemplated by Section 6138 of the Comp. Laws of 1871, relating to mortgages of homesteads.

Glidden & Marsh for Complainant.

E. F. Dewey for Defendant.

Recorder's Court of Detroit.

IN THE MATTER OF JOHN T. RYAN.

Privileges of a Witness.

The prompt service of the process of courts cannot be prevented by rules of manufacturers, requiring that no one shall visit employees during business hours.

On August 14, 1883, police officer Dealer went to John T. Ryan's place of business on Woodbridge street, Detroit, for the purpose of serving a subpœna issued out of the Recorder's Court, upon one of Ryan's employees. The officer failed to serve the subpœna, because, as he claimed, Ryan refused him access to the employee, and indulged in threats against the officer.

The court issued an order requiring Ryan to show cause why he should not be punished for contempt of court for his conduct.

Ryan, in his answer to the order to show cause, set forth the facts that himself and brother, Dennis T. Ryan, do business at 18 and 20 Woodbridge street east, and employ 250 hands; and that there is a rule of affiant's place of business (which is a general rule in most factories) that no person is allowed to visit or see any of the employees about the factory during business hours except upon the business of the house; that on August 14th, a policeman called and stated that he had a subpœna for Mr. Woods; that affiant said to the officer that he could see Woods at his residence; affiant, after looking through the directory and not finding Woods' name, ascertained from Woods his address and gave it to the officer, who went away apparently satisfied.

Affiant also disclaimed the use of threats or force of any kind, did not know what character of paper the officer had, and denied any intention to obstruct any process or officer of the court.

Prosecuting Attorney Caplis then put Officer Dealer on the stand, who swore to the facts set forth in the affidavit upon which Mr. Ryan was brought into court.

Mr. Brennan, attorney for Ryan, had his client sworn. He made his statement in support of his answer.

The Court, SWIFT, J., Held: That no rule of a business house could interrupt the prompt service of process or of the order of the court on employees.

The respondent was held guilty of contempt, and the court imposed a fine of twenty dollars or thirty days in jail.

Decided August 18, 1883.

James Caplis, Prosecuting Attorney, for the application.

Michael Brennan, (of Brennan & Donnelly,) for Respondent.

Lake Circuit.

WILLIAM JOYNER

vs.

AMOS FIANDT.

Taxes—Levy by Officer.

A tax roll fair on its face is a perfect protection to the officer in making a levy to collect taxes, although the particular tax for which the levy may be made is void.

By the Court, JUDKINS, J.: Plaintiff brought an action of trover against the defendant, who, as township treasurer of Chase township, in said county of Lake, seized and sold a large quantity of lumber belonging to plaintiff, to satisfy a tax appearing on the tax roll for 1882 against plaintiff.

The plaintiff on the trial claimed that the tax was void for the reason that at the time of the assessment by the supervisor in 1882, he, plaintiff, was a resident of Flint, Michigan, and had no property in Chase township to be taxed. The proof showed conclusively that such were the facts.

The tax roll *being fair on its face*, the court held that notwithstanding the tax was void, trover could not be maintained against the officer, but that his roll was a complete protection, and that trover or trespass would not lie against him. Cooley on Taxation, page 560, and cases there cited.

(February, 1884.)

Thos. Sutherland for Plaintiff.

C. M. Beardsley for Defendant.

Lake Circuit.

ERASTUS HAINES

vs.

TOWNSHIP OF CHASE.

Justice—Jurisdiction.

A justice of the peace has no jurisdiction to try a case against a municipal corporation.

By the Court, JUDKINS, J.: The plaintiff paid the taxes demanded of him for the year 1882 under protest, in accordance with Section 42 of the tax law of 1882, and within the time prescribed by that section began suit in justice's court to recover back the amount so paid. The justice held the plaintiff could not recover for the reason that the township was and is a municipal corporation, and that under Section 48, Paragraph 5296, Comp. Laws 1871, such courts have no jurisdiction to try causes commenced against municipal corporations.

The plaintiff appealed to the circuit and the judgment was affirmed, the circuit judge holding that the action to recover the tax back should have been commenced in the circuit court. 39 Mich, 484.

(February, 1884.)

Bellows & Stone for Plaintiff.

C. M. Beardsley for Defendant.

Kent Circuit Court—In Chancery.

WILLIAM FROST ET. AL.

VS.

JOHN LEATHERMAN,

Township Treasurer,

AND

DANIEL LUTZ,

Drain Commissioner

OF THE TOWNSHIP OF GAINES.

New Tax Law—Tax Levy.

The new tax law having made provision for hearing objections to taxes, an injunction ought not to be allowed to restrain their collection.

A tax levied under a law that is repealed or void because unconstitutional, is not a cloud upon a title, which will give a court of equity jurisdiction to set it aside.

By the Court, MONTGOMERY, J.: The bill of complaint in this cause alleges that the defendant, Leatherman, has in his possession the tax roll of the township of Gaines, and that there is a tax assessed thereon against lands belonging, in severalty, to the complainants, called a drain tax; that the complainants are apprehensive that, unless the defendant is restrained, he will return the land to the county treasurer, who will proceed to have the same sold to satisfy the tax.

The tax in question is spread to defray that portion of the expense of the construction of the drain in such township which the commissioner certified to be chargeable against the township for benefits derived by the township from the construction of the drain.

It is alleged that the tax is wholly illegal, and a preliminary injunction was granted by a circuit court commissioner to restrain the collection of these taxes.

Sufficient appears in the bill of complaint to show *prima facie*, irregularities which would render the proceedings of the drain commissioner void.

A motion is made to vacate the order allowing the injunction, upon the ground that an injunction is not an appropriate or permissible remedy to prevent the collection of a tax under the tax law of 1882.

Section 102 of that act provides that no injunction shall issue to stay proceedings for the assessment or collection of taxes under this act.

Section 42 provides that any person may pay the taxes under protest and recover from the township if it proved to be illegal, and sections 53, 54, 55, 56 and 57 provide a way for testing the validity of any tax assessed against the property of the taxpayer.

The whole scheme of the present law differs from the prior law in this very important particular, that under the present law no apparent cloud on any title can constitute any permanent cloud until the taxpayer has had his day in court.

It has been repeatedly held in this State that an injunction will not lie to restrain a tax on personality. Youngblood vs. Sexton, 32 Mich., 406; Mears vs. Howard, 34 Mich., 19. It therefore follows that the only ground upon which this injunction can be sustained is that the tax constitutes a threatened cloud upon the

title of the complainants; but it would seem to be a good answer to this claim that before the invalid tax can ripen into a title, or divest the complainants of any interest in the land, they are to have their day in court, and an opportunity to have the question of the validity of the tax judicially determined.

It would lead to endless confusion if, pending proceedings which are being taken for the purpose of enabling the parties in interest to take the judgment of this court upon the very question here raised, an injunction should issue to prevent the proper officers of the township, county or State from taking the steps necessary to bring the question before the court.

It was evidently with a view of preventing any possibility of this mischief that the Legislature enacted Section 102. It is contended by the complainants that Section 1730 of the Compiled Laws, being Section 40 of the drain law, is inconsistent with Section 102 of the tax law above referred to, and that Section 1730 has not been repealed.

The provision of section 1730 is that the collection of no tax or assessment levied, or ordered to be levied, to pay for the location and construction of any drain, shall be perpetually enjoined or declared absolutely void in consequence of any error of any officer or board in the location and establishment thereof, etc., etc., but that the court in which any such proceeding may be brought to reverse or declare void the proceedings, or to enjoin the tax levied, shall set aside the proceedings, and allow the complainant in the action to come in and show where he has been injured thereby.

It is to be observed of this section, first, that it does not, in terms, give the right to proceed by injunction, but simply provides negatively that no perpetual injunction shall issue. But were this otherwise, Section 21 of the drain law provides that as to taxes such as are in question, they should be levied as a part of the township tax for the year. They find their way on to the same roll. The proceedings to enforce the collection cannot be had except under the general tax law.

I have no doubt, therefore, that the provisions of Section 102 apply as well to the drain tax which is spread upon the general tax roll as to any other of the various taxes found thereon.

It was strongly urged by the complainants that the drain law, so called, is unconstitutional in that it provides for a drain commissioner determining arbitrarily the proportion of expense to be borne by the public, and by private persons, in advance of any exact knowledge on the part of the commissioner of the expense of constructing such drain.

It was also suggested at the hearing that the provisions of the new tax law so far conflicted with the provisions of the so called drain law as to effect the repeal of the latter by implication, and that no drain tax can now be spread or collected in this State; but if either of these views were to be adopted the complainants would not be entitled to retain their injunction, for if there be no statute authorizing the collection of any drain tax, either by reason of the unconstitutionality of the original drain law, or of its repeal by implication, the public would

necessarily know of the invalidity of any proceedings taken to enforce the collection of such tax, and such proceedings could not cast a cloud upon complainants' title. City of Detroit vs. Martin, 34 Mich., 170; Curtiss vs. City of East Saginaw, 35 Mich., 508.

So if there were no opportunity for a hearing upon the question of the validity of this tax, and the proceedings were to culminate without such hearing, yet as the complainants are entitled to pay any of the several taxes on the land, and leave unpaid this ascertained so called drain tax, it could constitute no cloud upon complainants' title if it held that there is no statute authorizing its assessment.

It follows that the order for the injunction must be vacated.

(February, 1884.)

Maher & Felker for Complainants.

Fletcher & Wanty for Defendants.

Wayne Circuit.

SARAH B. RICKABUS,

Proponent of the Will of William Buck, Deceased,

vs.

JOHN F. GOTT,

Contestant.

Brief History of the Case—Extract from the closing Argument of Judge Marston to the Jury.

One of the most interesting cases tried for years in the courts of Wayne county is the Buck will case.

William Buck, a native of England, in 1845 purchased of Philip H. Martz and George Laforge 210 acres of land in Grosse Point, being private claim 391, which is one of the old French farms, three acres wide, fronting on the Detroit river and running back to the Mack road. The Buck brick residence on Jefferson avenue still stands, and is occupied by Buck's nephew, John F. Gott, the contestant of Buck's will.

In 1862 or 1863 (the witnesses are clear that it was during the war) Mr. Buck made a will, by which he gave 40 acres of P. C. 391 to Sarah Buck Cordy, now Rickabus, and the remaining portion of his property to Elizabeth Buck, his wife.

Alexander Michie, present county auditor, drafted the will, and he and Peter N. Ellair and Geo. Martin duly witnessed it.

About November, 1873, Mr. Buck told Mr. Michie that he wanted to add a codicil to his will so as to

bequeath some money or town bonds in a way the will did not mention. About three weeks before Buck's death, which occurred on November 24, 1874, the conversation of a year previous as to a codicil was resumed, but he died before any codicil was executed.

Mrs. Rickabus was defeated in the probate court in 1880. She gained a verdict in the circuit in 1881. But a new trial was granted which resulted in April, 1882, in a verdict for contestant.

Proponent took the case to the Supreme Court, which reversed the judgment of the circuit, and granted a new trial. (51 Mich.)

The case came on for the third trial in the Wayne circuit in February, 1884. On this trial the jury disagreed.

It was reported that they agreed that proponent had proved a will that gave her forty acres of the Grosse Point farm. They stood ten to two in favor of the whole will as set forth in proponent's petition.

On the trial it appeared that Mrs. Rickabus, when about seven years of age, went to live with the testator, and that she worked for him continuously from that time until she was married, a period of about fifteen years. That she did the work in the house, milked cows and took care of horses, cut wood, and received therefor only her clothing and a few months' schooling; that she took the testator's surname, was married in his house, and that after marriage she and her first child had worked for testator without receiving any compensation therefor.

The contestant's counsel, in argument urged that the testator had destroyed the will because he was angry at the proponent on account of her first child having been born three months after her marriage; and because at another time, while the child, then eight or nine years old, was working for him, he had punished the boy, which caused ill feeling between testator and the boy's mother.

It also appeared that the contestant had been but seldom at the testator's house, and had never done any work for testator, except one-half day in digging ditches.

The reference to, and argument by contestant's counsel as to, the birth of a child as already stated, as a cause of revoking the will, brought from Judge Marston the following reply:

JUDGE MARSTON'S ARGUMENT.

It is then clear, beyond controversy, that a will was executed in 1862 or 1863, giving the wife of the testator all his real and personal property except forty acres of the old farm in Grosse Point that was given to proponent.

But counsel have here urged that this will was revoked, and that the cause of such revocation was the disgrace brought upon the testator by the birth of proponent's "first-born" three months after her marriage. That testator thereupon, to punish her, revoked his will, thus leaving his property to descend to contestant. Is

this true? Even if a child was born as stated, was the will revoked on account thereof? Was her offense one that could not be forgiven? Were the long years of faithful labor bestowed to be forgotten and remain unrewarded?

When a young girl, the proponent had entered the testator's house, become a member of his family, taken his name, and for long years had toiled and labored for his comfort and his benefit. She denied to herself the advantages which a common school education would have given her, in order to minister to the wants of the testator and his wife.

Could a life of faithful service thus rendered be forgotten in a moment, and the slight provision made for her be wiped out in order that one who had labored not might receive the reward?

Was her offense alone remembered, or did the old man read and observe the lesson taught him by his Divine Master—his Redeemer—before whom he expected to appear and render an account of his stewardship?

"While He sat at meat, a woman in the city, a *sinner*, when she knew He was at meat in the Pharisee's house, brought a box of ointment, and stood at His feet weeping, and began to wash His feet with her tears, and did wipe them with the hairs of her head, and kissed His feet and anointed them with ointment. And when the Pharisee questioned this, he was rebuked, and it was said unto him, 'See'st thou this woman. I entered into thine house; thou gavest me no water for my feet; but she hath washed my feet with tears, and wiped them

with the hairs of her head. Thou gavest me no kiss, but this woman, since the time I came in, hath not ceased to kiss my feet. Mine head with oil thou didst not anoint; but this woman hath anointed my feet with ointment. Wherefore I say unto her, thy sins which are many, are forgiven.'"

What had this contestant done that he should become the object of the old man's bounty? He had entered into his house, but not to labor, while this woman and her first-born, since they entered his house, had ceased not to toil for him; and can you doubt but that her sin was forgiven her, and the bequest to her permitted to stand?

C. B. Howell, W. F. Atkinson and *I. Marston* for Proponent.

B. T. and *Geo. H. Prentiss* for Contestant.

Superior Court of Grand Rapids.

IN THE MATTER OF LEONARD GASKILL.

Habeas Corpus—Preliminaries to Issue of Execution.

When in an execution from Justice Court it appears that a judgment was rendered in a sum within the civil jurisdiction of a justice, it will be presumed that all the preliminaries to the issuing of the execution have been complied with.

The respondent was taken and committed upon a body execution issued by a Justice of the Peace. The execution was after the form prescribed in Tiffany's Justice Guide. It failed to state the kind of action in

which the judgment was rendered; whether it was in an action of trespass, trover, replevin, or assumpsit. It failed to show that the action in which the judgment was rendered, was one in which a body execution could be issued. It failed to show that an affidavit was filed with the justice by which an execution is authorized. Because the execution failed in such recitals it was urged that the execution was void and the party should be discharged on *habeas corpus*.

The Court, PARISH J., Held: That it appearing by the execution that a judgment was rendered for an amount within the jurisdiction of the justice, giving the date and the names of the parties, it would be presumed that all the preliminaries necessary to the issuing of the execution had been complied with. That the same strictness which is required in criminal process is not required in case of civil process.

(April, 1883.)

Frank Kutts for petitioner.

John A. Fairfield, contra.

Oakland Circuit.

H. FRANK MESSENGER

vs.

ELIAS GUSTIN AND JOHN JOHNS, PARTNERS, &C.

Assumpsit on Open Account.

Suits commenced by Narr, are not commenced till the date of the service thereof.

On March 23, 1881, declaration as commencement of suit was filed and ruled to plead entered, and declaration delivered to the sheriff, who personally served the same March 29, 1881. On the same day the appearance of Johns was entered; also his plea and notice of the statute of limitations.

March 25, 1875, was the date of the last item in the account sued on.

The case coming up for trial, the Court, GASKILL, J., dismissed the suit as to defendant Johns, holding that the debt was barred before the suit was commenced.

(Dec. 1, 1881.)

Taft & Smith for Plaintiff.

Thomas J. Davis for Defendant.

Oakland Circuit.

FRANK B. GALBRAITH

vs.

LAFAYETTE BOSTWICK.

Declaration—Service—Statute of Limitations.

A suit commenced by declaration is not commenced so as to bar a claim accruing more than six years before the service of the declaration.

On May 19, 1880, the declaration was filed, and the rule to plead entered as commencement of suit. The declaration was delivered to the sheriff on the same day. The same was personally served June 1, 1880.

The declaration was in assumpsit on a judgment rendered by a justice of the peace, against Bostwick and in favor of Galbraith, in the sum of $106.50 damages, on May 20, 1874.

On June 21, 1880, the plea of the general issue was filed and served with a notice annexed that the action did not accrue within six years before the service of the declaration.

The Court, GASKILL, J., rendered a judgment for nonsuit against plaintiff, with costs, holding that a suit commenced by declaration would not bar the plea of the Statute of Limitation until the declaration was served. That the filing of the declaration, entry of the rule to plead, and the service of the declaration and notice of the rule, were all prerequisites to the commencement of the action.

(Dec. 22, 1882.)

Baldwin & Draper for Plaintiff.

Robbins, Davis & Davis for Defendant.

Oakland Circuit.

ELIJAH M. ADAMS

vs.

JACOB BUTLER.

Trespass on the Case—Jurisdiction of Justice.

When suit in Justice Court is commenced in a plea of trespass on the case, with damages laid at three hundred dollars, the justice has no jurisdiction.

Certiorari to justice court.

In this case the summons issued by the justice was in an action of trespass on the case, damages being laid at $300 or under. The declaration was on the common counts in assumpsit.

The defendant moved to quash the summons on the ground that when the summons was in trespass on the case, with damages at $300, it was void on its face. The justice overruled the motion, and plaintiff took judgment.

By the Court, GASKILL, J.: The summons in this case was void, as the plea was trespass on the case, and damages laid therein at a sum above $100.

(December, 1881.)

J. D. Bateman and *Thomas J. Davis* for Plaintiff in Certiorari.

Levi B. Taft, Contra.

Manistee Circuit—In Chancery.

S. W. FOWLER

VS.

HENRY J. HANNIFORD AND WIFE AND ALONZO R. LEANDER.

Demurrer—Wife as Party.

A wife is not a necessary party defendant to a bill to set aside a fraudulent conveyance signed by her with her husband.

A bill in Chancery was filed to set aside and vacate as fraudulent a deed of certain lands, executed by Henry J. Hanniford and wife to one Alonzo R. Leander.

Said Hanniford and wife, and said Leander were made defendants.

The bill was demurred to on the ground that the wife was not a necessary party to the bill.

The Court, JUDKINS, J., sustained the demurrer, but without costs, holding that the wife had no interest in the case that would justify making her a party to the proceedings.

(May, 1882.)

S. W. Fowler for Plaintiff

D. S. Harley for Defendant.

Wayne Circuit—In Chancery.

MARY CARRIER

vs.

NATHANIEL CARRIER.

Divorce—Presence of Complainant at the Hearing.

By the Court, JENNISON, J.: This case has been pending for four years.

Complainant's counsel asks for her a decree of divorce, and asserts that she is in New York, and cannot conveniently get here.

If she doesn't think it worth while to come to Detroit, I am not willing to grant her a divorce.

Complainants should appear and be sworn, and give their testimony in open court, as an evidence of their good faith.

(Nov. 7, 1883.)

United States Circuit—Eastern District of Michigan.

PAUL HARRY

vs.

PHILIP URIDGE ET. AL.

Amended Narr.—New Parties.

New names cannot be included as parties after the original Narr has been filed.

In 1883 Captain Paul Harry, of Canada, fell down a stairway on Griswold street, Detroit, and was injured.

The cause of the accident was claimed to be the breaking of the hand rail, put up by Uridge & Brooks, defendants.

He accordingly brought suit against this firm in the United States circuit court for $5,000 damages.

During the trial of the case he obtained permission, upon the withdrawal of a juror, to file a new declaration, in which he included Christie & DeGraff, makers of the railing, as defendants.

A motion was made to strike this amended Narr. from the files.

BROWN, J.: The motion must be granted.

New names cannot be included as parties to a suit after the original declaration has been filed.

(January, 1884.)

Griffin & Warner for Plaintiff.
H. M Duffield for Defendants.

Wayne Circuit.

JULIA ABERNATHY

vs.

TOWNSHIP OF VAN BUREN.

Security for Costs.

Where a case has been to the Supreme Court, and that Court's opinion is strongly suggestive that plaintiff cannot make out such a case as will be sustained by the Supreme Court, plaintiff ought to be required to give security for costs.

SPEED, J.: The plaintiff, who claims damages for personal injury said to have been received through the negligence of the township in not keeping a bridge in repair, secured a judgment in the court below, which was reversed by the Supreme Court, (18 N. W. Rep., 116) and now asks for a new trial.

The court expressed the opinion that it was probable plaintiff would not be able to recover a judgment which would be sustained by the Supreme Court.

Under the circumstances if plaintiff desires to experiment in the endeavor to induce the Supreme Court to reverse its opinion, she should not do so at the expense of the defendant, which has spent a great deal of money in defending the suit.

The court refused to grant the order unless the township was secured by plaintiff for this expenditure in case of another adverse judgment, and ordered that such security in the sum of $500 be filed with the clerk

within 60 days, in default of which the usual judgment will be entered in defendant's favor.

(May 29, 1884.)

S. R. Harris and *H. M. Cheever* for Plaintiff.

S. R. Burroughs and *Moore & Moore* for Defendant.

Wayne Circuit.

ESTATE OF DENIS J. CAMPAU.

APPEAL FROM PROBATE COURT.

Probate Practice—Appointment of Administrator.

Application by the widow or next of kin for letters of administration after the lapse of thirty days from the death of decedent, stands on the same footing as similar applications by creditors of the estate.

The facts sufficiently appear in the opinion of the court.

REILLY, J.: The learned counsel who presented this matter to the court submitted a number of questions which I do not feel called upon to decide, in view of my construction of this statute.

The action of the Probate Judge was taken under the following section of the compiled laws: "Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same, in the following order:

"1. The widow or next of kin, or both, as the Judge of Probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust.

"2. If the widow or next of kin, or the person selected by them shall be unsuitable or incompetent, or if the widow or next of kin shall neglect for thirty days after the death of the intestate to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it."

Within thirty days after the death of Denis J. Campau, Catherine D. C. Palms, a sister of the deceased, applied to the Probate Court for the appointment of Charles B. Lothrop, and upon that application the usual order was made.

Upon the day set for the hearing of the application, petitions were filed for the appointment of Daniel J. Campau, jr., as administrator, but this was after the lapse of thirty days from the death of the deceased.

I am inclined to think that under this statute preference is given to the widow or next of kin in the first instance; that after the lapse of the thirty days within which they may apply, they stand upon the same footing that creditors of the estate do, and application having been made by the next of kin within thirty days for the appointment of an administrator, it is the

duty of the court to appoint such person, if he is a suitable and proper person to discharge that trust.

Before the court can overlook the application made by the next of kin within thirty days, he must determine that the party sought to be appointed is not a suitable or competent person.

In this case, Mr. Lothrop being the only person that the next of kin asked to have appointed within the thirty days, it was the duty of the Probate Court, and it is the duty of this court to appoint him, unless the court comes to the conclusion that he is not a suitable and competent person.

I think Mr. Lothrop is a suitable and competent person, and the appointment made by the Probate Court must be affirmed.

If the application for the appointment of Daniel J. Campau had been made by the next of kin within the thirty days prescribed by this statute within which the next of kin may apply, it would be the duty of the court to determine which one should be appointed, but as this matter is presented now, I do not think that there is any discretion in the court as to the appointment.

I must follow the plain language of the statute, which is that the widow, or next of kin, or any person recommended by the next of kin, within the thirty days, must be appointed administrator, if a suitable person, and if not suitable, some one requested by those having the right to apply after the thirty days.

If this is not the proper constructtion of the statute I do not see the use of the second clause in the section which I read, that, if the widow or next of kin shall neglect for thirty days after the death of the intestate to apply for administration, it shall be granted to some other person.

I do not think that a creditor can apply for administration on an estate until after the lapse of thirty days after the death of an intestate, the widow or next of kin having the absolute right to apply for administration within this time.

This course was pursued in this matter, and as I have already stated, I think that the action of the Probate Court in appointing Charles B. Lothrop must be affirmed.

(November 26, 1878.)

Moore & Moore and *Theodore Romeyn* for Appellant.

M. Firnane, *C. A. Kent* and *Geo. V. N. Lothrop* for Appellee.

Wayne Circuit.

THE PEOPLE

vs.

CHARLES R. FORD.

Argument to Jury—The Juror's Oath.

This trial, which took place late in the fall of 1883,

was deeply interesting, and almost dramatic. The defendant (who has recently mysteriously disappeared at Monroe, it being claimed by some that he is dead, but by others that he is alive,) several times during the trial, used such language as to call forth the rebuke of the Court, (JENNISON, J., presiding.)

The prosecution was ably managed by James Caplis, prosecuting attorney, and Geo. F. Robinson, his assistant.

The defense was in charge of two of as able lawyers as practice in the State, Col. Sylvester Larned and J. W. Donovan, the latter making the closing argument for the defense, which is here given. It contains many passages that bring home to a jury their individual duty in dealing with evidence, and to mind a trial that was intensely bitter throughout, with a great many facts and prejudices to add to the original charge of false pretences, practiced against two poor ignorant German farmers, clients of lawyer Charles R. Ford, then of Wyandotte. Ford had lately been seriously handled in a case to disbar him, (he was subsequently disbarred), where 140 witnesses were sworn, and, with a farmer jury, much feeling was created.

It was generally believed that nothing could save the defendant from a ten years' term of imprisonment.

The result will appear in its proper order.

The substance of one of the most effective speeches in the case is as follows:

J. W. DONOVAN'S ARGUMENT TO THE JURY.

GENTLEMEN OF THE JURY:

When I closed my opening in this case two weeks ago, you must have said—if you were fair-minded and impartial men—and such I believe you to be, gentlemen, for I would not think you capable of taking the oath you did without this impartial feeling—you *must* have said in your hearts, all of you: "If that is true, Ford can't be guilty."

Very beautiful and impressive is the juror's oath: "You, and each of you, do solemnly swear that you will well and truly try the issues in this case according to the law and the evidence, so help you God;" or, as in the Ohio and Kentucky form, still more impressive, "As you shall answer unto God hereafter."

On taking this oath you are under a double tie of fairness that no prejudice or outside pressure should overcome or disturb for an instant. And I take it that none of you are hard-hearted enough! to wilfully wish to torture any one not guilty on the evidence, for the sake of pleasing his enemies.

In all cases of this nature certain principles are known in law at the outset. They are older than the judges, older than the oldest juryman, and have been and will be law long after we are all laid in our final resting places.

One of these principles is: it devolves upon the people to prove guilt to a *moral certainty*; but the defendant need not prove his innocence. If a reasonable

doubt remains in any branch of the case, he must be acquitted; not this defendant only, but it is the *law of all cases of this nature.*

Again, it is safe to err on the side of mercy, if you err at all, and much better that you make no mistakes which involve so many years of the life and liberty of a citizen.

And while we admit that the story told by the two Germans is in the main truthful, we deny that it shows the guilt of C. R. Ford as charged in the information.

To begin with, to convict Charles R. Ford of this offense, you must in the main story rely on the testimony of Moses H. Clement, whom we impeached as guilty of so many offenses that he lost all recollection of their number! Not only have we proven him a bad and dangerous witness, but a man of mean malice, of dangerous practices and deep-seated revenge for the greater part of his unworthy career in this county. I promised to impeach this man Clement, and we *did* impeach him by his crookedness, by his story of many crimes, by his neighbors, and by the very best men of Wyandotte, including Mayor Evans. Evans said his reputation is bad. Peat would not believe him on oath. Jackson said, *very bad.* Baxter said, he is a very bad man. Jones: I would hate to believe him alone. Robinson said his character for truth is *mixed*, and Pardo said: he admitted to me that he belonged to a gang of five land swindlers. He admitted to you, gentlemen, on his own examination, five offenses against law and decency that he was guilty of—embezzlement,

beating his little girl, beating his brother-in-law, drawing a revolver on a woman, perjury, and stealing a goose. These show dishonesty, cowardice, for "he who lays his hand in anger on a woman is a wretch whom 'twere base flattery to call a coward." Not only is this man impeached by these facts, but by the story of two separate witnesses.

The story of Clement is that he colluded with Ford to put up a tax title case on Polzen and Urbane, and make a fee out of it in court or settlement. That Ford drew a declaration and gave it to Clement, and he finally relented and confessed his shame, which resulted in this case of false pretenses against Ford that we are now trying.

I dwell upon this man's story for the reason that if *true*, Ford is guilty, and if false, he is the victim of that man's malice, and a man who could carry malice against his brother could do it against Ford. For it has crept out here that Ford collected $27 for Clement, and paid it over, and soon after Clement called with a woman and demanded it over again, or "he would make trouble."

Here is the beginning of this law suit: Clement went to Ford's with Mrs. Kinger. He admits he did. He demanded money. He admits he did. He threatened trouble. He admits he did. He started for Col. Larned to bring suit. He had no retainer, and went to Mr. Robison, the prosecuting attorney, and the ball was started. All this is admitted. While at Ford's that morning, Jan. 16th, he took an ink copy in Ford's writing—an office copy.

This is the story of an enemy—of one impeached—of one on whom hangs this anxious prosecution.

I dwell upon this, for *a chain is no stronger than its weakest link.** If this link, Clement, breaks, the case fails. If this centre column falls, the building crumbles. If Clement's story is untruthful, then Ford must be acquitted, for the corner stone of this prosecution is Moses H. Clement, with neither mortar nor props to support and sustain his showing.

Our theory is: That Ford got this declaration from Polzen. He got it from Urban on the farm. John Fraser handed it to him. Clement handed it to *him*. James Fraser copied the original from Clement's *pencil writing* in the city hall, and Ford never saw it till it came in the ordinary business way to his office. I don't guess at this theory. We proved it by the two farmer boys—the Fraser boys—one who wrote it at Clement's request, one who served it for Clement's money, both swear to it, both are unimpeached and both earnest and truthful! They tell the story of sense and reason. They are sustained by other evidence.

Now, if Ford received the declaration (which was the paper to start this suit, on which he got $25,

*There were many circumstances besides Clement's story pointing strongly to guilt. One was the declaration, dated Jan. 16th, in Ford's writing, and only explained by the statement of a couple of children that it came from Ford's waste basket, and was his office copy, made after Polzen brought the original. Besides this, neither Ford nor his wife could stand cross-examination safely, and were not sworn to explain matters.

claimed to be by false pretenses,) honestly, then he is *not* guilty! Then he earned his fee; for he went to Monroe and Ann Arbor, both on this business. John G. Hawley saw him at Ann Arbor, and Auxman saw him at Monroe. These two trips would richly earn the $25—all the money actually paid out by these farmers.

Ford was a business man and well engaged. He needed no crime to make his business. He was overworked at home. Why squander costs of trip to Monroe and Ann Arbor? He examined Polzen's title, and wrote a postal card to "call on business." No crime in the card surely. It is openly done. He got the building insured. No crime in that. And finally he gives in his bill and they settle, and the farmers go home. They remain satisfied till Clement gets angry on his blackmail-double-payment $27 matter. Then the claim is reopened. Clement goes to Robison, who is no friend of Ford's, and he goes to Essex to see the Fraser boys. He says: "Did you make that paper for Ford?" "No!" If you will come and swear you did—after thinking it over—I'll pay your time and expenses. And then, because he refused to so swear, and because I called them farmer boys, as they are, Mr. Robison wants to know if it is a *marsh farm* they own in Essex? As if a *marsh* farm could not be worked by farmer boys! Then when he testified to the truth—when by law they should have sworn him for the people—when they knew they were suppressing honest testimony in the interest of *revenge*, they order or try to put him into custody, and a scene occurs in this court room that was a *disgrace to this prosecution!*

Look at the moral of this case. The law says Fraser should have been put upon the stand for the people. He would have cleared Ford, for he swears he made the paper for Clement; but they persecute him, and uphold the blackmailer, Clement. No man is safe when such can swear away his liberty. Deprived of his liberty, not by due process of law, but by the voice of his sworn and dangerous enemy. It will not be done, gentlemen.

Day after day through this long and tedious trial, I have told our client, Charles R. Ford: Go home to rest and come early, and no harm shall come to you from this investigation. Day after day has the prosecution clamored for his conviction. And it is for this reason, and because there is bitterness, that I ask you to be mindful of your oath, that I mentioned at the opening.

Imprisonment to Ford means death. He is not robust. Long imprisonment to any man is death. Hugo well says: "The man that came out of that prison was not the one that went in. Wrinkled and worn and old and shattered in nerves, and ruined in his life, what had he left worth living for?" And he adds: "The law gives no remedy for a wrongful imprisonment. It takes the bread from his children, but offers no return."

But you will make no such mistake. You are the judges of the law and facts. After all are done, you decide it, you determine the right and wrong.

I have told you that imprisonment is death. It is

worse than death. I have seen death in cruel forms—death on the plains without care—death of a bright, ambitious boy by small pox, where no one could move him, and no one but a half-breed Indian to attend him—but it was not dishonor. The case I speak of was Charlie Crouch, in New Mexico. The case I now urge is Charles R. Ford, of Wyandotte. Take him and convict on the impeached testimony of a villain, or acquit him. I would put your hand in his and say, lead him to liberty.

But of all facts that I would write upon your hearts and engrave upon your bones—remember your oath and the principles that declare all men innocent till proven guilty by evidence that you would act upon in matters of your own intimate family relations. You *have each solemnly* sworn to give a true verdict under the law and evidence, and not to satisfy the prejudice of this defendant's enemies.

Trouble comes in a mysterious way to us all. This is a day of peril to Ford's family. It may some day be a trial of your relations.

See to it that the influence of your verdict shall not lower the standard of law and liberty, but let it condemn the punishment of all men on the evidence of impeached witnesses—for without the evidence of such he is surely *not guilty.*

(Jury so found.)

Superior Court of Detroit.

HUGH S. PEOPLES

VS.

THE EVENING NEWS.

Brief Reference to the Case—Opening Address to the Jury of Col. John Atkinson, Attorney for the Defendant.

This was an action brought to recover damages for an alleged libel, which consisted in the publication of an article by defendant, which, plaintiff claimed, contained a charge that he was guilty of the murder of Martha Whitla.

Probably no case was ever tried in Detroit that attracted more or wider attention, not excepting the Railroad conspiracy and the Ward will cases.

Of the opening speech to the jury of Col. John Atkinson, attorney for the defendant, which follows, it was generally remarked at the time it was delivered that it was one of the greatest forensic efforts in this country, in this generation.

In the several trials growing out of the Whitla murder, Maj. Geo. H. Penniman, attorney for Peoples in the Evening News case; Judge C. I. Walker, of counsel on the same side; Hon. Geo. V. N. Lothrop, counsel for the Post and Tribune, which Peoples also sued on a similar charge, and who was with Col. Atkinson in the News case; James Caplis, prosecuting attorney, and Geo. F. Robison, assistant, who, with Hon. Alfred Russell, conducted the prosecution of Peoples on a charge of murder in the Recorder's Court; and Hons. W. C. Maybury and John D. Conely, who defended and

procured the acquittal of Peoples in the same case —all these distinguished counsel made speeches that were equal to the occasion, and we would gladly reproduce them all, but they would fill the whole book.

The trial of the Peoples-News case resulted in a verdict of no cause of action, which was affirmed by the Supreme Court, (51 Mich.)

OPENING ARGUMENT TO THE JURY BY COL. JOHN ATKINSON.

MAY IT PLEASE THE COURT AND GENTLEMEN OF THE JURY:

It has become my duty in this case to state to you the evidence which we expect to introduce to sustain the defense, and I join with counsel for the plaintiff in the request that he made to you that you prepare yourselves to consider the absolute rights of the parties.

I desire at the outset that you should remember who brings this suit and against whom it is brought. This is a suit in which Mr. Peoples seeks to recover large damages on account of some supposed injury to his reputation. It is brought against the Evening News association, a corporation acting under the laws of this State.

You must bear in mind precisely what a newspaper is in the days in which we live, in order to judge properly in this case. Our great newspapers, I might premise, are

THINGS OF MODERN GROWTH.

Two hundred years ago such a thing as a daily was unknown to the world. In those days intelligence was very little spread among the people. We can scarcely

form a conception, in looking over the history of those times, of the rapid growth that has since taken place, and which is presented in almost its full development at the present day. The great Battle of Waterloo only occupied half a column in the London Times, while the little warfare between the Boers and the British soldiers away in South Africa was published sooner in England than the news of Waterloo, and occupied an entire paper as they are now published. The cause of this growth is that since newspapers were started—the first newspaper in England being published in 1665—there has been a continual extension of the freedom of the press to express their ideas upon all public questions. As late as the reign of Charles the Second it was decided by the twelve justices of England, at the head of whom sat the immortal Chief Justice Scroggs,

WHOSE NAME HAS BECOME INFAMOUS

to every student of history, that it was a crime to publish any news without the license of the king. From that day the license has gradually been extended to the press, till now we live in a time when it is supposed that the press may comment freely upon, and publish freely all public transactions.

I will call your attention for a moment, that we may contemplate the change in this respect, to a statement of Macaulay as to what a paper was in 1665. Speaking of the newspapers of these times, he says:

"None of these was published oftener than twice a week. None exceeded in size a single small leaf. The quantity of matter which one of them contained in a year was not more than is often found in two numbers of the Times. After the defeat of the whigs it was no longer

necessary for the king to be sparing in the use of that which all his judges had pronounced to be his undoubted prerogative. At the close of his reign, no newspaper was suffered to appear without his allowance; and his allowance was given exclusively to the London Gazette. The London Gazette came out only on Mondays and Thursdays. The contents generally were a royal proclamation, two or three tory addresses, notices of two or three promotions, an account of a skirmish between the imperial troops and the Janizaries on the Danube, a description of a highwayman, an announcement of a grand cock fight between two persons of honor, and an advertisement offering a reward for a strayed dog. The whole made up two pages of moderate size. Whatever was communicated respecting matters of the highest moment was communicated in the most meager and formal style."

NOT IN ACCORD WITH PROGRESS.

I call your attention to this, gentlemen, from the fact that it was under a system that promoted such newspapers as Lord Macaulay described, that many of the decisions were rendered which will be cited in favor of the plaintiff in this case. They are decisions which are not adapted to our times, which are not in accord with the progress we have made. I call your attention to the newspaper press of England at a later period. After showing its great growth since the revolution, Lord Macaulay says:

"Some weak men had imagined that religion and morality stood in need of the protection of the licenser. The event signally proved that they were in error. In truth the censorship had scarcely put any restraint on licentiousness or profaneness. The Paradise Lost had narrowly escaped mutilation; for the Paradise Lost was the work of a man whose politics were hateful to the ruling powers. * * * * From the day on which the emancipation of our literature was accomplished the purification of our literature began. That purification was effected, not by the intervention of senates or magistrates, but by the opinion of the great body of educated Englishmen before whom good and evil were set, and who were left free to make their choice. During a hundred and sixty years the liberty of our press has been constantly

becoming more and more entire, and during those hundred and sixty years the restraint imposed on writers by the general feeling of readers has been constantly becoming more and more strict. At length even that class of works in which it was formerly thought that a voluptuous imagination was privileged to disport itself, love songs, comedies, novels have become more decorous than the sermons of the seventeenth century. At this day foreigners, who dare not print a word reflecting on the government under which they live, are at a loss to understand how it happens that the freest press in Europe is the most prudish."

I read this to you, gentlemen of the jury, to show that in the opinion of the great thinker, Lord Macaulay, the greater the freedom extended to the press the purer literature it produced.

We must remember, gentlemen of the jury, that the men of these times are not satisfied with such a paper as that described in the extract I first read to you—the paper of 1665.

THE NEWSPAPER OF TO-DAY.

We ask, with our morning coffee, news from every part of the world. We want to know of all the battles that have taken place. We want to know of all the contests that are going on. We want to know every step of progress that is being made from one end of the world to the other. We expect it from the papers every morning, so that it is impossible that editors or reporters should deliberate, as philosophers and authors do, before they give us the news. But there is another thing that we expect especially from them. We expect not only that they will bring to us foreign news, but that they will comment freely upon everything passing at home; that they will comment on the acts of the government of the United States, the acts of the government of the State, on the acts of the

county authorities, the State authorities, and all other persons in authority. That they will lay before their readers all disorders that are prevailing in the community; that crimes may be published that they may be detected and punished. Starting out with the idea that this is the office of a newspaper, let us look into this case.

WHAT MUST BE PROVED.

It is alleged in the declaration here that the plaintiff was a good and reputable citizen, respected by all his neighbors, and that the Evening News, greatly envying his happy state, through malice, determined to destroy his reputation. This is the allegation that is made, and before you can render any verdict in his favor, it is necessary that you should arrive at the conclusion that these allegations have been proven; first that the plaintiff was a good and reputable citizen guilty of no fault, and second that the Evening News association, this incorporation, looking upon him, envied his happiness and determined through malice to destroy it.

It has been well said by the learned counsel for the plaintiff that a corporation cannot be guilty of any malice, and the only malice that can possibly be proved in this case must be the malice of the agent; and as we go on, gentlemen of the jury, we will see whether that is in any sense proved.

"THE BAG MYSTERY."

On the 13th of March, 1879, two young men were passing down the river, and near Clark's dry dock discovered some object in the stream. They approached

it and found it to be the body of a woman tied up in some sort of burlap. The limbs were tied up to the breast, there was a piece of linen tied across the mouth, apparently to drown the cries of the poor girl as she was thrown into the river. The doctors examined the body on the beach where these young men had drawn it out. It was taken from there to the public undertaker's, and for some days exposed to the public sight.

The first great question, when the body was discovered, was, who was the girl? The question was very natural. There lay the body of the woman, bearing upon it all the marks of a deliberate murder. There was no chance for a mitigating thought. There was no chance for accident. Everything showed murder, and murder committed with the most deliberate intent. It was not one of those cases where reason is dethroned, and through passion a person is killed. This girl bore upon her body the marks of deliberation, the marks of cruelty, the

MARKS OF A HORRIBLE DEATH.

She lay there for what purpose? To have some one identify the remains. How should they be identified? How should the public know the facts? In our busy times, in such a city as this, we pay little attention to the suffering of others. But there was one great agent which has sprung up in modern times, one great way of reaching the people of this city, and the people of this State, and the people of this country, and that was to publish all that had been discovered upon this dead girl in the daily papers. The great dailies of this city came to the rescue of society in the work of identifying this body. They pub-

lished all that was known; a description of the clothing, a description of the trinkets that were taken from her pockets, and everything that could possibly lead to her identification. They kept publishing it from day to day, calling public attention to it, crying, as it were, to the four winds of heaven, saying to everybody,

"COME AND IDENTIFY THIS DEAD GIRL!"

People stood around her, as my learned friend, Maj. Penniman, has most eloquently expressed, asking, with the poet:

"Where was her home?
Who was her father?
Who was her mother?
Had she a sister?
Had she a brother?"

And I will take the freedom of furnishing him with the three remaining lines from the same poet:

"Or was there a dearer one
Still, and a nearer one
Yet, than all other?"

These were natural questions. They were questions that every one looking upon that body must naturally ask, because I take it that in a community like this the life of a woman should not be taken thus ruthlessly and no inquiry made as to who were the murderers.

These, gentlemen of the jury, were questions that were asked. How should they be answered? The only way of reaching the public, as I have said to you before, was to publish all the facts in the daily papers, and the publication brought a train of observers to look upon that dead girl that furnishes

A PICTURE WE SHOULD NEVER DISMISS

from our mind. Brothers came from distant States to look into that dear dead face, to see if they could discover there any trace of their own lost sisters. There were old couples marching by in that procession, peering into those shapeless eyes in a way that told too truly the story of their own misfortunes. Now and then a hardened criminal passed along the line to see whether it was one of his victims that the waters had surrendered up, or the victim of some one else. In the train of observers, if we are correctly informed, this plaintiff passed, but what his object was it will remain for you to say after we offer the proofs. I speak now only as I am told by a witness.

For several days, as I have told you, that body lay there awaiting recognition. She had been so long in the water that her face was a mere mass of decaying flesh. There was nothing by which she could be identified, unless possibly by her clothing or the trinkets that remained.

She was not identified, and she was finally buried as unknown, and it seemed for a time as if this was one more of the mysterious deaths that occur too often in our midst, a mysterious murder, whose perpetrator had done his work so well that detection seemed impossible.

The watchers who had stood about her lifeless form returned to their callings. The public undertaker, I suppose, collected his bill, as he does in all these cases. Society drew a long breath, and seemed to fancy it had done its duty. What more could be done? What other agency was to be found than the publication made by the newspapers to ferret out this terrible crime?

THE DEAD IDENTIFIED.

About thirteen months later a woman living in the western part of the city was talking to a neighbor, and in some way the article published in one of these papers was brought to her attention. She was told that among the trinkets found upon the girl was a thimble marked "M. W." This woman was Mrs. Canton, whose name has frequently occurred in the testimony already given. Mrs. Canton recognized the initials "M. W." as the initials of Martha Whitla. She immediately came down to the police, looked at the thimble, looked at the clothing, and recognized them as the property of the dead girl. She had seen her sew with this thimble a thousand times in her daily contest for bread. She recognized these articles thirteen months after the girl had been buried, as the property of Martha Whitla.

The seed sown by the press had, as you will see, now begun to bear fruit. We knew one fact more than we knew to begin with. We knew before only the horrible fact that a murder had been committed. We had now the fact that the murdered girl was Martha Whitla, and who was Martha Whitla?

The police of the city, with a vigilance that was becoming to them, immediately started on the scent. The name was all they had to begin with. Reporters of the newspapers, equally vigilant, and, as I hold, equally bound to the public, started also on the scent. The first we could learn of Martha Whitla was that she was left without a mother when two weeks old; that her father died before she was quite three years old. Left without a mother when two weeks old,

THIS LITTLE ORPHAN GIRL

had grown up to womanhood, and finally found her grave in the river that passes by our city.

I can imagine, gentlemen of the jury, as the mother kissed that baby for the last time, and left her to the pity and charity of this world, that she might have thought with confidence that if this, her offspring, was ever ruthlessly murdered, society would punish the criminal.

Martha's life as a little girl we know little of. We only know that when she was nearly three years old she was adopted by Mr. John Whitla, who will be put upon the stand, and will tell you what you may desire to know, and what his honor will think admissible, of this girl's life. She went to school, and her life passed in a commonplace sort of way, as far as we can learn. She learned rapidly, became very much esteemed for her neatness and industry, and seems to have formed some very firm friendships in her school days. When she was was about fifteen or sixteen she came to this county. Her sister, Mrs. Peoples, had come to this county before, married William Peoples, and went back to Ohio on a visit. Martha came to assist her in her household duties. So she came here, as near as we can ascertain, in 1865. At the home of William Peoples she first met the plaintiff in this case. She was then a girl of sixteen. He was a young man of twenty, a young man whose education had been somewhat neglected, but who was bright, rather gallant and good looking. They seemed to have made a good impression upon each other. Shortly afterwards he went to Lake Superior to work.

We are enabled, gentlemen of the jury, to get glimpses into their inner lives from letters which he wrote to her while on Lake Superior. There are a number of letters which will be exhibited to you. I will not attempt to read them now, because I think the better practice is to wait until they are offered in evidence, so that counsel may inspect them and object to them if they see fit.

HUGH PEOPLES' LETTERS TO MARTHA WHITLA.

The first letter is written on the steamer when he goes up. The next follows shortly afterwards, and so they continue, showing that a continuous correspondence was kept up between Hugh S. Peoples and Martha Whitla from the day he left William Peoples' till the time he returned. These letters, gentlemen of the jury, are not open avowals of love, but they contain those little delicate expressions of esteem and respect, which are even more powerful on the mind of a girl of that age than open avowals of love. They show in fact that he was anxious to make her believe that he loved her, and anxious to make her love him in return. In one of these letters he mentions the fact that he had somewhere heard sung her favorite song, "Father, Dear Father, Come Home." He describes the scene to her; how the little one pleads with her drunken father to go home with her, to come away from the poisonous cup, and how the father lingers there, still unable to go. I can imagine, gentlemen of the jury, and I think you will follow me in the thought, when this girl read that letter, the feeling that must have possessed her soul. She said to herself: "I have impressed upon this man a part of my own virtue. I have filled his

heart with a holy sentiment, and although far away he sends me a greeting; that he is humming my favorite song; that he has listened to it with pleasure because it is my favorite song." Before he went away he evidently presented her with the accordeon which is here mentioned, and with some other tokens of his affection and regard. In the last letter he tells her he is coming home. It is addressed to William Peoples, Mrs. William Peoples and to Martha, all the three, and we find it in poor Martha's trunk. No doubt to William it was a mere message from his brother; no doubt to Mrs. Peoples it was a mere message from her brother-in-law; but to Martha it was a part of her lover, a part of the work of his hands, and she folded it to her heart and laid it away. Poor girl! She little thought that these missives that she was then putting away in her trunk should ever be used on such an occasion as this, as a proof of her lover's perfidy, as the proof of her lover's cruelty, as

THE PROOF OF HER LOVER'S CRIME.

He came home, and soon after his return the relations between them seem to have entirely changed. They met as lovers beyond all question. They went to dances together, they sang together, they went where young people usually go together; and in some unfortunate moment Martha surrendered her virtue to this plaintiff, and then all was changed. I say this, gentlemen of the jury, and we will prove it, not merely by the lips of living witneses, but we will prove it, I am sorry to say, by the handwriting, the letters of Hugh S. Peoples found in Martha Whitla's trunk after her identification. From that time on his attach-

ment for her entirely ceased. It was the old story over again of Amman and his sister Tamar. You remember that when King David's first-born had ravished his sister whom he dearly loved, he immediately began to hate her as deeply as he had loved her before, and the girl that he had professed the holiest affection for he ordered from his door, and told his servants to bar the door behind her. It was so with Hugh S. Peoples. From the moment this girl yielded to him her all, she became more clinging and more affectionate, while he became cold and anxious to get rid of her, yet unable to resist the impulses of his passion and lust. This second series of letters are all upon one subject. They appoint places of assignation, places where he shall meet her; places where he thinks they will be safe from the observation of his friends; they are full of caution to her to be wary of the steps she takes, to be careful not to permit other people to know where she was going. In other words he guards his own reputation at the same time he gratifies his passion.

It is true, gentlemen of the jury, in law as well as in philosophy, that a woman who has yielded herself in this way becomes reckless; she scarcely cares who knows how deeply she has sacrificed herself to the man she loves. She has sacrificed everything; she can look for nothing more. She has not only lost her position in this life, but her hope of happiness in the next; while, on the other hand, under

OUR PECULIAR CIVILIZATION,

the man who has seduced her may yet hope to marry a good and virtuous woman, and be regarded as a

respectable and honest citizen. So it was in this case. Martha seems to have become rather reckless in her manner; and the plaintiff, who was still ambitious for a position in life, cautions her to be very careful of every step she takes in meeting him, in what she says about it, etc.

We shall show this as supplementary to the testimony introduced, in addition to what you have already heard. We now have the testimony of his brother and his sister that if there was any correspondence between them it was unknown to the family, so that all this letter writing, all this correspondence, seems to have been clandestine, seems to have been secret, seems to have been with a purpose.

Hugh S. Peoples, after his return from Lake Superior, worked a while in Detroit, and to Detroit came poor Martha. Hugh S. Peoples went from Detroit to Wyandotte; to Wyandotte went Martha. Hugh S. Peoples went out to Ypsilanti to school, and to Ypsilanti went Martha. She was

THE SHADOW OF HIS LIFE.

He could no more get rid of her than he could get rid of the stain which the sin he had committed had made upon his soul. She followed him from place to place, and his life became one series of amours and assignations. After he came from school at Ypsilanti some little time elapsed. He came into Detroit and there set up housekeeping. Martha became his housekeeper, and, gentlemen of the jury, we shall be able to show you, I think, by testimony of which you can have little doubt, that during the period she was his housekeeper, she was recognized by many as his wife; that she was

known in the neighborhood as Mrs. Peoples, that they lived together for years in open and shameless fornication. Neither of them being married the legal crime of adultery was not committed.

THE CRIME OF ABORTION.

In spite of their wishes their intercourse became fruitful, and in these letters which we will read to you there are directions from Hugh S. Peoples to Martha, telling her how she may dispose of the offspring which she carried in her womb; in other words how she may have abortion committed. There is the enclosure of the filthy fee of $5, which seems to be enough to buy some ruffianly doctor of medicine to commit this horrible crime in this community.

Now, gentlemen of the jury, we want to lay these facts before you and ask you to reflect upon them. The passions which God has given us, when properly exercised, are the sources of our holiest feelings. They inspire us with a love of home, a love of children, a desire for offspring. Under their influence a man approaches the woman of his choice almost like a god. To them is given the awful power to call a mortal soul from heaven, to clothe them with their own flesh and to stamp upon them their own peculiarities; but the man who approaches a woman with felon's step, with bated breath, fearing detection, listening to every sound, that man walks with devils, and, although living,

HAS ALREADY TASTED HELL.

It was in this spirit that Hugh S. Peoples approached Martha Whitla night after night, for many long and

weary years. But a time came when he was anxious that this relationship should cease, and from one of these letters it would seem as though they determined to have it cease at one time and determined that they should see each other only in the presence of a third party, Mr. Stringer. But if that determination was ever made, it was soon broken. He resolved to get married, and before he could get married some kind of truce had to be patched up with Martha Whitla. What kind of truce would that be? I know not what passed between them. The lips of Martha Whitla are forever sealed. The plaintiff is not likely at this time to give us a statement of it upon which we could rely. The result was, however, that he gave her a note for $400 just before his marriage; and gentlemen of the jury, notwithstanding the evidence introduced here, we shall ask you, when this case is done, to believe that she carried that note until her dying day.

WHO HAD THE MOTIVE TO KILL MARTHA?

While she was living with him the fires that have been spoken of here occurred and she is supposed to have known all about them.

Now, gentlemen of the jury, in inquiring into this case, it will be necessary for you at the outset to ask who had the motive to kill this poor girl? What was in her life? What was there in her relations to others to make them murder her? Because the fact of murder here is not disputed. And in investigating that question, you will naturally inquire what were her relations to all the world besides? Had she quarreled with anybody who would be likely to kill her from anger? Had

she done anyone an injury who would be likely to kill her for revenge? Had she entangled her life in any way with the life of some one else, so that it would make it an object to that someone else to bring her existence to an end?

Martha Whitla seems to have kept her letters carefully. We have the package of her letters here as they came from her trunk, and if she ever corresponded with any other man, she kept no record of it. Her life seems to have been entangled only with this one man. No one else seems to have been permitted to have any interest in her except him.

Now, gentlemen of the jury, I have told you

THE HISTORY OF THIS GIRL

up to the time of his marriage. Martha attended the wedding; and you can imagine, gentlemen, the feelings with which she looked upon that glad ceremony. There was the man that had once promised to marry her; there was the man who had seduced and ruined her, now about to pledge his hand and heart to another innocent girl and take her to be his wife. You can imagine, I say, the feelings of Martha Whitla, but she crushed them all back. Hope was dead in the heart of Martha Whitla. She went and bought a copy of the bible, and on its frontis-page presented it to him as a wedding present. In doing this the poor girl displayed a wisdom which was, perhaps, all unintentional. That volume, if he should read it afterwards, if any influence in this world could bring him back to the righteous thoughts that he should have, would be apt to bring him there; that volume would teach him his wrong to

Martha Whitla; that volume would teach him the duty of reparation, his duty to others. She undoubtedly thought at the time that she had made a truce with him which might be lasting, but this kind of feeling in woman, though it may be smothered, is never killed. She went back to the house some time afterwards and she found that Hugh S. Peoples or some one else had become

ASHAMED OF THE PRESENTATION

in the front, "Presented by Martha Whitla to Hugh S. Peoples on his wedding day," and had torn out the page. Hugh S. Peoples knew his relations to this girl, and he was ashamed to have that appear there in his family. He was ashamed to have his friends look upon the fact that she had presented him the book which was lying on his parlor table, and so the page was torn out. Martha Whitla afterwards went to the house and discovered this fact, and what did she do? She became very angry, just as the discarded woman always becomes when she finds the man who has seduced her is ashamed of having his name associated with hers. When she became angry she determined to do him an injury; and how should she do it? She determined to do him just such an injury as women always are determined to do in such cases; to injure him in his domestic relations; make him feel that the relations he had contracted with another should not be happy, if he thus

SPURNED THE GIRL HE HAD SEDUCED.

So she turned over that bible, turned past the various books of the old testament, looked over the pages of

the new tastament, but tore nothing there. But she came to the record of Hugh S. Peoples' marriage; she felt she had been injured by his marriage to another, and she tore to shreds the record of that ceremony. Now, gentlemen of the jury, why did Martha tear that particular part of the bible, and leave the rest intact? Because that referred to the wrong that had been done her. That referred to the injury that had been inflicted upon her. That referred to the relations she had once hoped to have with this plaintiff, but which had become impossible by his subsequent conduct.

What did he do? He had her arrested and taken to the police court. But, gentlemen of the jury, if he had prosecuted that case, all the relations he had maintained with that girl would have gone out; and after he had her arrested and taken there he dropped the prosecution. Another truce was patched up, as we understand. They got together in some way and William Peoples agreed to pay this note which Hugh had given her. Hugh Peoples did not want to be bothered afterwards by her applications for money. Mrs. Wm. Peoples has stated to you she was always asking for money, and he was desirous she should not ask him, as it would naturally

CREATE SUSPICION IN HIS FAMILY

and among his friends. There was no exchange of notes, gentlemen of the jury, if we understand the facts. However, as to that we possibly may be mistaken. But there was an agreement on the part of Wm. Peoples to pay this note of Hugh Peoples. The object was to have Martha ask William for it instead of asking Hugh.

And right here, gentlemen, I will ask you to consider, if their relations had been proper, if their relations had been legitimate, if there had been nothing wrong in them, then why, why, I ask you, was Hugh S. Peoples afraid to have this girl speak to him about money on a note which he owed, fearing that it might attach suspicion or annoy him?

After this truce Martha went out to service. We find her at different places, working hard, working zealously to earn a living. We find her still following Hugh S. Peoples as a shadow wherever he goes. To a most respectable lady of this city, who will be placed upon the stand, she declared, Hugh S. Peoples, married or unmarried, she never could give up.

She went out for a time to service, and shortly before her death was at work at Mr. Theiss's out in the country. On the 10th of January, 1879, she announced at Mr. Theiss's her intention of

COMING TO DETROIT TO COLLECT

some money that was due her upon a note. We have no record in the life of Martha Whitla of any note except that of Hugh S. Peoples. One of Mr. Theiss's boys took her in a sleigh and carried her as far as Dearborn on the evening of the 10th of January. She remained at Mr. Johnson's, the hotel keeper's, on the night of the 10th, and on the morning of the 11th Dr. Collar was passing the door and was called, and she rode with him to Detroit, and stopped at Eisenlord's house. On the way she told the doctor her mission to Detroit was to collect the amount due on a note. At the Eisenlord house she told Mrs. Eisenlord her mission

to Detroit was to collect the amount due her on a note. She went to Mr. Marsh's, a jeweler on Michigan avenue, and had a pair of earrings fixed. She told him a man had agreed to marry her, but had married another girl, and he had given her a note, and she was going to see him that afternoon and collect it. She told the same thing to Stella Hoffman, a woman living at Ridgeway, who has been frequently alluded to on the part of the plaintiff in this case. She announced to them all that she was going to collect the money due on a note. To Mr. Marsh she offered to show the note, but he said it was none of his business, and he didn't look at it. About 4 o'clock she leaves the house with the avowed purpose of collecting the note. We do not trace her along the streets from near Second street and Michigan avenue, but we next see her going into the Franklin house, and in the Franklin house, at the time she went in, was Hugh S. Peoples. The next that is seen of her she is passing below Mr. Marsh's. He looks out and sees this same woman passing with a man, whom we suppose to have been the plaintiff in this case. That was 4:30 o'clock in the afternoon of January 11, 1879, almost three years ago, now. It was wintry weather. The night was coming down upon them. Thus far we trace her steps with unerring certainty, and from that point on

ALL IS VEILED IN MYSTERY.

This girl, gentlemen of the jury, whose life had been entangled with nobody else; this girl, whose life had been a part of this plaintiff's life, who lived with him and in him, as you might say, who revolved around

him in an orbit as certain as the earth revolves about the sun, we leave upon our streets, in the peace of God, in the peace of the people of this State, on her way to this plaintiff, or with this plaintiff, it matters not which, for the purpose of collecting that note; and when next seen, her body is taken up from the Detroit river, bearing upon it all the marks of horrible murder.

Now, gentlemen of the jury, these facts were discovered by the press; they were discovered by the police; and the question then came, was it lawful to set these facts before the world? Was it lawful that the people of Detroit should know all these facts, so that they might supplement them with other facts and discover to a certainty the murderer of this dead girl?

I insist, your honor, that it was not only the privilege of the press, but it was the duty of the press to lay these facts before the public, so that anybody having any knowledge of this transaction might bring that knowledge to bear upon it, and bring the perpetrator to justice.

THE ANCIENT LAW.

I call the attention both of the court and of the jury to the ancient law upon this subject. I will first state it. My brothers will undoubtedly concede it.

Before the days of newspapers, gentlemen of the jury, in the old days of the common law, the whole country was divided into neighborhoods, called hundreds; and it was the duty of any citizen who became cognizant of a murder to commence crying upon the highway, "murder! murder! murder!" until the whole hundred was

turned out. It was the duty not only of that hundred to turn out, but when they reached the next they also were bound to turn out, until all the hundreds from the center to the sea were crying "murder! murder! murder!" until the perpetrator was discovered. Not only was the man authorized and bound to cry murder, but he was bound to state all the facts within his knowledge. He was bound to state not only the facts within his knowledge, but bound to state his suspicions; for suspicion itself is an important fact which may lead to inquiry.

Mr. Penniman—If he called the wrong person he had to be killed himself, though.

Mr. Atkinson—My friend is not accurate in regard to the law. A good many persons in those days brought actions against those who started the cry of murder on the streets; but it was invariably held, even under such lawyers as Justice Scroggs, that unless the man started it maliciously, he could not be punished; and if he did so start it, he was not hung; he was only sued, as the Major has sued the Evening News in this case, for damages. Of course my learned brother considers it equal to hanging to have a suit brought against it by himself.

Now, gentlemen of the jury, I call your attention to this, the ancient law, upon the subject, and so that we may not have any misunderstanding about it, because this has a very great bearing upon the law as we shall ask it from your honor in this case, I read from Jacobs' Law Dictionary under the head of "Hue and Cry."

Mr. Walker—If my brother reads it as law we object.

Mr. Atkinson—I read it to your honor, because we desire not only to lay before the jury such facts as we

intend to prove, but also to notify your honor of such legal positions as we assume in this case, that they may be before you and the application of the testimony to those positions may be seen.

Mr. Penniman—I submit, your honor, the doctrine of justification is so well settled here that the opinion of Justice Scroggs or Jeffries, or any other ancient authority my brother may find, will have very little effect upon this court as a matter of law. Of course it sounds well, and has a little tinge of romance about it.

THE ONLY MAN "COMPELLED."

The Court—Can I prevent counsel from stating what law he proposes to cite?

Mr. Penniman—I submit he should not read this as a part of his speech.

The Court—When I commenced practicing the court compelled counsel to read the statutes and state the law as a part of the opening.

Mr. Penniman—If your honor feels compelled to listen to it—

The Court—I do not feel *compelled*, Major. Go on.

Col. Atkinson—No one feels himself *compelled* to listen to it but the Major.

I propose, following this ancient doctrine, to show the gradual growth of

THE DOCTRINE OF RIGHT

and the doctrine of privilege from those days down to the present time. [Col. Atkinson then read from Jacobs' Law Dictionary, under the head of "Hue and Cry," as before cited.] This, gentlemen, is a portion of

the description of that ancient remedy; and I find it was the settled law of England, long before newspapers were established, that this hue and cry should be raised and that it should keep spreading itself by the cry being repeated until it reached the sea; and if it did not, then the neighborhood itself was to be punished for the crime. And indeed, gentlemen of the jury, I am not sure but it would make the people of Detroit more vigilant, more watchful of the lives of others, and especially of the lives of poor girls who are

BROUGHT HERE AND THROWN INTO THE RIVER

from time to time, or into the river Rouge, if we ourselves were punished unless we brought the offender to justice.

Now, this was the old rule. In 1665 there was a newspaper established in London known as the London Gazette, and just as soon as that newspaper was established the government availed itself of the fact and an act of parliament was passed providing that not only should they raise this cry upon the highways but should publish in the paper all the facts which had come within their knowledge, so that other facts might be added; and unless the hundred published the fact in the London Gazette, then established, they were punished, even though they made the pursuit required by law.

THE PRESS SUCCEEDS THE "HUE AND CRY."

Now, gentlemen of the jury, in the progress of modern times this institution known as the hue and cry has gone out of existence. In that day it was the only way

of communicating the facts to all the people, so that they might be on the alert to arrest the murderer and bring him to justice. But in modern times the telegraph takes the news to every quarter almost as soon as it occurs. The press spreads the intelligence to everybody, and the press takes the place in modern society of the hue and cry in ancient society. And thus I hold it to be not only the privilege of the press, but its right and its duty when a murder is committed, to spread the news broadcast everywhere; to spread all the facts that have come to its knowledge; so that the murderer, wherever he goes, may hear the cry of "murder! murder! murder!" ringing in his ears, until his guilty soul gives up its secret, and he is brought to justice.

Why, the counsel for the plaintiff asks you, gentlemen of the jury, "Is it possible that a man who has committed this grievous crime is walking in our midst?" Gentlemen of the jury, it is not only possible that

THE MURDERER OF MARTHA WHITLA IS IN OUR MIDST,

but it is morally certain that the murderers of half a score of girls murdered within the last few years are walking in our midst. These men are not arrested. We know these crimes have been committed, because we find the dead bodies. We know to a moral certainty that others have been committed where we do not find the bodies. We know that girls are lost from time to time, and no traces are found of them. From the waters of this beautiful river come to the surface one by one the bodies of these dead girls. It is no fancy, gentlemen of the jury, that these murderers are in our midst. We know they are amongst us, because we know these

crimes are being committed. What shall we do for their detection? If it be true, gentlemen of the jury, that the press cannot publish the facts, how are we going to detect them? Now I do not say that in publishing the facts the press have a right to lie about any citizen; but I say that the press have a right to publish in good faith everything they can find out in regard to a crime of this kind; even if it will leave some citizen in a situation that he is called upon for an explanation.

A MATTER OF PRIVILEGE.

No great step has been made in modern improvement but what injury to individuals has sometimes resulted. You cannot run a lightning express through this State without occasionally frightening a farmer's horse. Yet we would not stop the express. You cannot run a steamer up this river without making navigation in canoes a little dangerous, and although canoes have a more ancient right to these waters, we would not stop the steamer. So with the newspaper that is bound to publish the news, it may do a possible injury, but unless it does it maliciously it is not punishable, if it has acted in good faith and in the discharge of a public duty.

Now, gentlemen of the jury, I have traced Martha Whitla up to that evening. She was either on her way to this plaintiff, or was with this plaintiff, whichever it may be.

For three years society has reached just that point. It has come to this plaintiff, and then it has been

thrown from the scent. If he has ever offered any explanation I have not heard it.

HE LIES DIRECTLY IN THE PATH OF INQUIRY.

He lies exactly before the parties who are calling "murder! murder! murder!" for this dead girl; and instead of giving the information within his possession, he snarls, and bites, and sues, and insists on damages, because they have reached that point in the investigation.

Now, what was Mr. Peoples' duty, provided he was an innocent man, when this article was published? Did this girl reach him that night when she was on her way to find him to collect the money on that note? If she did, then he can tell society the fact. And is not society entitled to all he knows on that subject, that it may discover the murderer of this girl? If she reached him, and he paid her that note, then she had money, and that might be an object for somebody else to kill her. If she did not reach him, then who had any object to kill Martha Whitla? If she reached him he can tell us where she was a at later hour than anybody else who has seen her. He can tell us whether there were any fiends lurking around there to do this horrible crime. He can tell us which way she went, with whom she went, where she said she was going. In other words, he can advance this inquiry a step, so that we would be one step nearer the

PERPETRATOR OF THIS HORRIBLE CRIME.

But he does nothing of this kind. He lies there, as I have told you, right in the path of inquiry, blocking

the way. We have probed the way all around him. We have gone into the byways, have gone into the paths that come up into the road as we approach him, but we find no way around Hugh S. Peoples, and we can get no information from him.

Gentlemen of the jury, this is a case of circumstantial evidence. There is not a circumstance in the case that does not point directly towards Hugh S. Peoples. There is not a circumstance in the case that points towards anyone but Hugh S. Peoples.

Now, in investigating a homicide of this kind, when a party is under suspicion, it is always proper to investigate his conduct, to see whether he has done anything

TO DIVERT SUSPICION FROM HIMSELF;

to see whether he has done anything towards suborning witnesses. In other words, to see whether he has acted like a guilty or like an innocent man. We find these facts after the identification of Martha Whitla's remains. We find Hugh S. Peoples, just as soon as he was informed that the body found was that of Martha Whitla, rushes up to Mrs. Canton's, where Martha had a room, and tries to get into her room to examine the things she had in there, and see what was in her trunk. He was after that package of letters.

Gentlemen of the jury, Hugh S. Peoples knew of this correspondence, though his brother and his sister and his brother's wife were ignorant that he was corresponding with this girl. Mrs. Canton refused to permit him to go in there. The letters were finally turned over to the police, and through the courtesy of the police we are permitted to use them on this trial.

What next does he do? In a conversation with one of the police officers one of the Theiss boys had dropped something in regard to marriage with Martha Whitla. It was an expression equally consistent with innocence or guilt; but the mere mention of marriage between them excited suspicion on the part of the plaintiff, and a prosecution was at once started against the Theiss boys by him for murder. He hired private counsel to prosecute them, and he remained in the court room during the first day. We shall show by Mr. Harris, who was defending the Theiss boys in that case, that when in the court room he said, "Your honor, our defense in this case is that the Theiss boys are not guilty, and that another man who sits here [pointing at the plaintiff] did murder Martha Whitla," this man arose and left the court room, and did not return. He remained at Mr. Cheever's office afterwards, and got such information as he could from time to time of the proceedings. The Theiss boys of course were discharged. There was no evidence against them. We will be able to show, I think, gentlemen of the jury, that during the examination of the Theiss boys, this man approached witnesses and tried to procure testimony against them, testimony that was false, and

TESTIMONY WHICH HE KNEW WAS FALSE;

and this we suppose to have been done with a view of diverting suspicion from himself.

We will show, gentlemen of the jury, a fact which already appears, I may say, by the testimony here, that from the 11th of January, 1879, when Martha

Whitla was last seen upon our streets, up to a time some 16 months later, when Mrs. Canton recognized her, there was not a word of inquiry by this man for that girl. She had been almost his daily companion for years. She had been the shadow, as I have told you, of his life. She had loved him to madness. She had been annoying him by her importunities for money. Yet suddenly she is missing for 16 months from the community, and there is no inquiry of any kind made by him as to what has become of Martha. Poor old John Whitla, the generous old man who took this orphan girl to his home and supplied the place of a father to her, went to where she was working at Theiss's and inquired what had become of Martha. He and his wife were looking round to see what had become of this girl so suddenly missing. But this man, to whom Martha's face was familiar every day, who had been annoying him by her importunities, and who had been loving him too fondly and too well, never makes an inquiry as to the fate of this dead girl until she was finally recognized.

THE SUIT AND THE SEARCH.

This article was published, and for more than a year we heard nothing from Mr. Peoples, when suddenly one morning a paper is served bearing the imprimatur of Major Penniman, suing this paper for $50,000 for publishing this article. Since then we have been on the constant lookout to develop the facts in this matter; and we have developed them, as I have stated to you, and as they will be laid before you. In doing this I must say we have had a long and weary work. We have been in the prisons of the country where those

liable to aid this man in his work are incarcerated. We have heard their stories; some saying they knew of this, some saying they did not. We have had to deal with almost every kind of character in looking for this testimony; because we knew that this girl was killed by more than one person; one could not have killed her and left her as she was found; he must have had associates, and we know very well it is among such men he has found his associates, if at all.

We will establish to your satisfaction, gentlemen of the jury, that this girl was an innocent girl when she was 16 years old, when she came to the Peoples. We will show to your satisfaction, by his own letters, that they became lovers. We will show to your satisfaction that he afterwards

SEDUCED AND RUINED THIS GIRL,

and that for years she lived with him as his mistress. We shall show that she had this note the last day she was ever seen. When she was last seen she carried this note in her pocketbook with her thimble. When she was found everything was found except that note. That note is missing. That note has never come to light. Where is it? The thimble was there and the pocketbook was there; the clothes were there; the earrings; everything was left on this poor dead girl except the note she carried against Hugh S. Peoples; that was gone.

What inference shall we draw from this?

PUBLISHED IN GOOD FAITH.

Now, all these facts came to the possession of the reporter of The Evening News. We will show you

that the reporter was told these facts; but the man whose life was so entangled with that of Martha Whitla, the name of that man, rather, was not given to him. He believed these facts to be as I have stated. He believed them as I think you will believe them when the testimony in this case shall have been concluded; and so believing he wrote the article counted upon in this case; the printer set it in type; it was put in the form, and the great press rolled it out, and by midnight of that day these facts became known to 50,000 people. This paper which we defend here to-day, gentlemen of the jury, has spread this intelligence to all the world. These gentlemen need take no pains in proving the circulation. We have spread it, and we would spread it a thousand times as far if we had the power, believing it was our duty and our right to do so.

NAUGHT OF MALICE.

We will show you by the reporter that he did not even know Hugh S. Peoples, so that he could not have possibly been influenced against him. We will show you by the proprietors of the paper that they did not know Hugh S. Peoples, so that they had no malice in this case. And then we will submit this question to you, gentlemen of the jury, and if you find in this case we have not only exercised a right and a privilege, but that we have performed a sacred duty to the community, then your verdict can be only one way; and I think that you will say that this newspaper which is being prosecuted here to-day not only did its duty in publishing these facts to the world, not only exercised its right and its privilege then, but that it has rendered a much

more sacred duty in developing these facts so that they may now be laid before this jury, and possibly attract the attention of the public authorities and

BRING THE CRIMINAL TO JUSTICE.

Human life is too cheap amongst us. The lives of women are too cheap. The characteristic of this age is to have respect and love for woman; and if we, citizens of this great country, are to stand idly by while they are seduced and murdered, and their bodies thrown into this stream, then we are unworthy the name of citizens or freemen.

If this investigation, gentlemen, however expensive, shall bring the criminal to justice, then, although my client in this case shall have borne much more than its share of the public burden, we shall be satisfied with the discharge of the duty done.

J. T. Johnston, Geo. H. Penniman, and *C. I. Walker* for Plaintiff.

John Atkinson and *Geo. V. N. Lothrop* for Defendant.

Kalamazoo Circuit.

ROBERT CHENEY

vs.

HARMON N. BARBER.

Extracts from the Closing Argument of Hon Charles S. May, Counsel for Plaintiff.

Action for seduction of plaintiff's daughter.

IF THE COURT PLEASE, GENTLEMEN OF THE JURY:

I can hardly exaggerate the seriousness and importance of a case like this. These facts touch to the quick the deepest and the tenderest places in our human hearts and lives. There sits a father, bent and bowed with a weight of shame and sorrow which no language of mine is adequate to describe—his beloved daughter, his only child, his last earthly stay and comfort, sent all untimely, in the bloom of her youth, by man's baseness, to a sad, dishonored grave. The junior counsel for this defendant in his opening to you, and the senior who followed him (Hon. J. C. Burrows), both thought it necessary, for some reason, to warn you against what I should say, and my manner of saying it. God forbid that any thought or purpose such as they have ascribed to me, should enter my mind at such a time as this. I know not indeed if I have any power to move you, but if I have, it must come from above, and I pray the Heavenly source of all inspiration to give me the power to-day to plead this old man's cause before you.

Gentlemen, these are the blessed Christian holidays, the season consecrated in all the Christian world to human

charity and good will, hallowed by all the memories and recollections of our boyhood years; and as the music of this beautiful festival even now reaches our ears from the gay world without, we sit here solemnly to inquire by whose hand was this young life crushed out of this bright world—by whose dark and damning deed was stilled this once happy voice, and this young heart once as bounding and full of life and hope as any that follow the merry Christmas bells to-day? Surely the occasion, the time, the question before us and its surroundings—all these must speak to you with most impressive language of the high duty which you are to perform, and no words of mine are needed to emphasize it.

Gentlemen, all this testimony concedes—there is, there can be no dispute—that here is a most touching and pathetic tragedy. Who is the author of this domestic desolation—nay, of this most wicked *murder?* Let us run the lines of investigation backward from this newly made grave. Prompted, inspired and governed by the high duty which we owe to society, to justice and the law, let us pursue this investigation. He who has wrought this deed of hell shall not escape though he robe himself from head to foot in blackest falsehood. There is no place in the universe of God where a *lie* is safe or at rest. Cover itself as it will, hide itself as it will, sooner or later it will be hunted down and discovered, and the broad light of the open day shall stream into its hiding place, and make it stand exposed to all the world. Who then, gentlemen, is the guilty man? Let us look for him in this testimony.

* * * * * * * * * * *

I have shown you now, gentlemen, the number and

character of the witnesses for the plaintiff, their means of knowledge and the naturalness and consistency of their testimony. This testimony may be circumstantial, but it is nevertheless conclusive—it is such as the law receives and it enforces conviction. In its broad, clear light we may trace the guilty relations of this defendant with Alice Cheney. Here is the beginning, the middle, and the end. He, a man of fifty and childless, takes this motherles girl of thirteen into his family. She is of fine form and handsome features, just developing into a fair and beautiful young womanhood. Like another infamous Appius Claudius, this defendant is smitten with the charms of this budding Virginia, and hastens to adopt her, binding himself solemnly by that writing, which is in evidence before you, to be to her as a father and a protector. Then the evidence shows the unmistakable fondness, the desire to be in her company, the frequent interviews, the rides with her alone, the little presents, and trinkets and favors, so well calculated to please a girl's fancy and to call out her gratitude.

With the powerful and natural influence thus acquired over the innocent and unsuspecting victim, the testimony brings the parties down to that fall of 1872, and the beginning of the winter following. This is the immediate period to be examined by you, for the testimony conclusively shows—indeed it is not contradicted—that at about this time Alice Cheney became pregnant of a child. Who was the father of this child, conceived under such circumstances? I have shown you the household of the defendant at this period—I have shown you all the strong and overwhelming probabilities which point to him—and to no other.

But, gentlemen, this is not all. The defendant's subsequent conduct throws a flood of damning, convicting light upon this question. You know the old adage that "Actions speak louder than words." It is so here. By what he has done in this matter this defendant has as conclusively admitted his guilt as though his own mouth had uttered it. In the eyes of the law conduct is admission. For this guilty intimacy had borne its fruit, and then came the struggle to conceal. Then came the artifices, the old women's remedies, the drugs, the appliances of abortion. In vain, in vain! Like Eugene Aram, his every effort at concealing only showed more plainly the damning evidence of his guilt. Then the infamous Coppleberger appears upon the scene, and the tragedy hastens to its close. The order of nature could not then be balked, and nature would soon make her fearful revelation. The handy villain fell quickly into the plan suggested to him to marry the girl and take her to her relatives in Ohio. I care not for specific proof of conspiracy—it is plain enough that the defendant made haste to embrace this opportunity. No man saw the price of blood paid; but to be sure that the work should be done, the defendant follows his co-conspirator and the poor victim of his lust to Ohio, where, sick and worn, drugged and lacerated, she yields up her young life and goes down to her grave, at the very spot where her happy childhood, encircled by a mother's love, first opened upon the world. There, in the midst of the last sad scenes, was the defendant, still trying to conceal, but still disclosing the evidences of his guilt—telling falsehood upon falsehood about her condition to Boynton, Mrs. Wilcox and others, as you remember—fairly

hovering over the dying pillow and the grave itself to turn away suspicion and stifle investigation. O, gentlemen, it is a damning chapter of guilt and ruin. From out that untimely grave a solemn voice must have sounded in the ears of this defendent,—"*And Lust, when it hath conceived, bringeth forth death.*"

* * * * * * * * * * *

And yet this man says he was "a *father* to this girl," that "he *loved* her as a *daughter*." Gentlemen, this is a dangerous, a fatal admission. He could not love her as his own child, for Nature has reared in the parental relation her strong and eternal barrier to lust—a barrier which only brutes can pass. Here there were no ties of blood to hold back the seducer.

* * * * * * * * * * *

Gentlemen, the senior counsel for the defendant, who closed the argument for him, did not cease to ring the changes upon the fact which fell out in the evidence that the neighbors and fellow townsmen of this man had raised a purse to help pay the expenses of this prosecution. Again and again did the counsel come back to this charge, and make the court room echo to his denunciations of this "Stock Company." O, short-sighted advocacy? Cannot the counsel see how damaging all this is to his client! What a confession is this! A man whose character and deeds are so odious and vile that his own neighbors, the substantial and solid men of that township, as these men are, are constrained to concerted action and effort to bring him to justice! Who can blame them? Gentlemen, I know the men of that town, and in the days of my boyhood I have seen them band together and make common cause to hunt down some wolf or

bear that had borne away the lamb of the early flock. God of mercy! this human wolf has borne away and *killed* this old man's tender lamb, and shall not his own neighbors start on the trail of blood? * * * * *

Verdict for plaintiff—$5,000.

(December 26, 1876.)

O. W. Powers, George M. Buck and *Chas. S. May* for Plaintiff.

Dallas Boudeman, H. F. Severens and *J. C. Burrows* for Defendant.

United States Circuit Court—Eastern District of Michigan.

SELAH DUSTIN

vs.

ASA D. DICKENSON.

Motion for New Trial—A Rampant Witness.

Where the plaintiff is testifying in his own behalf, and insists upon violating repeatedly the orders of the Court directing him to cease using abusive language towards the defendant, he cannot complain if the Court sets aside a verdict obtained by him in the action.

Plaintiff is familiarly known as Captain Dustin, he having for many years been a Captain on vessels on the upper lakes and the Detroit river.

He sued defendant to recover an alleged large balance due from the defendant, who resides in New York, but who was formerly an attorney in Detroit, on an old unsettled account.

During the trial, while giving testimony in his own behalf, in spite of the objections of counsel for defend-

ant, the request of his own attorney, and the orders of the Court, plaintiff went off into a harangue, consisting of expletives that a Captain of a vessel might have used (under the old order of things on shipboard) towards a recalcitrant deck hand, but which sounds strangely in a court of justice when employed to characterize an opponent.

The number of epithets that plaintiff applied to defendant was too numerous to be counted except by a professional accountant.

He indulged in similar tantrums several times during the trial. In spite of this conduct, which would ordinarily prejudice a jury against a party, Captain Dustin obtained a verdict for a good round sum.

Defendant's counsel promptly moved for a new trial on the ground of the misconduct of the plaintiff on the witness stand, above alluded to, and upon more than a score of other grounds.

The Court, BROWN, J., in a written opinion of much interest to the legal profession, held that the first ground was tenable, and granted a new trial.

The plaintiff subsequently gained another verdict, which was not disturbed.

(December, 1880.)

John Atkinson for Plaintiff.

Griffin and *Dickenson* for Defendant.

Superior Court of Detroit.

JOHN MINER

vs.

DETROIT POST AND TRIBUNE.

Libel—John Chinaman—Extract from George V. N. Lothrop's Argument to the Jury.

This was an action of libel, in which plaintiff recovered a verdict for $250.

Defendant took the case to the Supreme Court, which reversed the judgment below, and granted a new trial.

A pretty full statement of the facts in the case appears in 48 Mich. Reports, page 358, to which the reader is referred for the details.

We would like to give the whole of the argument to the jury of the leader of the bar of Michigan, Hon. Geo. V. N. Lothrop, but the space that is left for other matter admonishes us that we must forego that pleasure, in this volume at least.

The following extract from the argument of Mr. Lothrop to the jury is of interest to the citizen, the statesman and the diplomat, as truly as to the members of the legal profession.

After referring to portions of the alleged libelous article,

MR. LOTHROP SAID:

And then it (the article in the Post and Tribune) proceeds: "Instead of that he (Police Justice Miner) turns upon a helpless Chinaman who has no political

influence to sustain him, and much prejudice to combat."

Now, gentlemen, there is no libel in that, not one particle of it. And most unfortunately it is true. This Chinaman was helpless. There are large communities in which he is not only helpless, but more than helpless. In this community there is no such gross prejudice as exists in some other places. But the Chinaman is none the less

A STRANGER IN OUR GATES.

He is not surrounded with friends here. No love or affection go out to him here, and the Chinaman is helpless; and the fact that he was helpless—I do not impute it as a crime to Judge Miner—would have been an entirely proper consideration to have moved Judge Miner to consider that while he administered justice, and exacted justice, he should be sure that he did not press the line or plummet of justice too far against this man or against these men. The Chinaman was helpless; the Chinaman had no political influence. You know it. Why, gentlemen, could the Chinaman be made a citizen of the United States? You may come from the farthest land of Europe, you may belong to the most down-trodden, oppressed people of Europe, and our gates are open. Citizenship is open, and there is but one single office in the whole land to which the new comer is not welcomed if he can attain it. Let him come from China and he will meet decisions—I think they are utterly unsound and utterly indefensible; but he will none the less meet them—which declare that these United States are not broad enough for citizenship

to the Chinaman. He cannot become a citizen of the United States, but he must remain forever an alien and a stranger. Shall the Chinaman go back under such circumstances? Shall he remain here in the land, he to whom so long as he lives in the light of the sun there is no honorable and cheerful recognition, and no receptacle but the darkness of the grave! He, under such circumstances, is justified in turning his back on a land like that. This is not the land of my youth, nor the land of my faith. I was reared to believe, and I gloried in it as an American citizen, and I still glory in the faith, that these United States were

THE REFUGE FOR DOWN-TRODDEN, OPPRESSED HUMANITY,

of whatever land, and that here they should meet a better civilization and receive a warmer recognition; that they should be welcomed to the privileges of citizenship. That is my faith. I am told that over 200 years ago my own ancestors came, the victims of persecution, to this land, and so long as I live and retain my memory of that, I will never be untrue to that faith, and I will insist that every person who comes here shall receive the same recognition. If they shall not, then we admit there is no virtue in our civilization, and I also think we admit that there is no divine inspiration in our Christianity. That man has no political influence. He could not vote, and I know voting is not indifferent to Judge Miner. He could not vote. He not only could not vote then, but there was a bar constantly against him. As I said before, he was not only without political influence, but he was absolutely a stranger, and had only such friends as those who from Christian motives desired to go out

and recognize him as a man, and call upon him as a common sharer in a common salvation. Judge Miner was bound, while he recognized that this man was subject to impartial justice, to remember that he was also a stranger, not knowing our language, not having friends here, and that he was entitled to as much consideration as the circumstances of the case would justify; and what the newspapers said upon that subject was simply and only literal truth, "instead of this he turns upon a helpless Chinaman who has no political influence to sustain him, and much prejudice to combat." Why, he has mountains of prejudice to combat. I doubt whether there is the door of a family into which the stranger Chinaman can receive social admission. He can go where his money pays, within certain limits; he can receive certain menial employments, but that probably is the limit of the Chinaman's enjoyment in free America. Now, this fact was a matter of criticism; and I have pointed out to you that it is not libelous; I assume as a matter of course that the court will tell you that it is not libelous, because

IT IS FAIR CRITICISM;

and its only bearing in this case will be for you to determine whether it indicates any malice, or whether it is a fair application of this case as there stated in the article.

(February, 1882.)

John Atkinson for Plaintiff.

H. M. Cheever and *Geo. V. N. Lothrop* for Defendant.

Washtenaw Circuit.

THE PEOPLE

vs.

SOPHIE LYONS.

Closing Argument to the Jury of Charles R. Whitman, Prosecuting Attorney, on the Second Trial.

This is a cause *celebre*, not only to the citizens of Washtenaw Circuit, where it was tried three times, but the people of the whole State, as well as many in other portions of the country where the defendant is so well known in criminal annals, watched with great and eager interest the progress of the different trials.

Defendant was charged with the larceny of a watch from Mrs. Herrick Cornwells, of Ypsilanti, Washtenaw county, at the county fair held at Ann Arbor, on the 6th day of October, 1881. The first trial resulted in the conviction of the accused at the January term, A. D. 1882. The Supreme Court granted her a new trial. (49 Mich., 78.) The second trial occurred at the January term, 1883, and, like the first, was hotly and ably contested on both sides.

On July 2, 1883, the Supreme Court again reversed the judgment of the court below, and granted a new trial. (16 N. W. Rep., 38.)

In this last opinion the Supreme Court made a very great mistake as to one fact. They say impeaching testimony was introduced against Mrs. Theresa A. Lewis, the principal witness for the prosecution, and *none in her support.* Probably the record which went to Lansing so stated, but if so, there was an omission

of important testimony, for a number of old citizens of Detroit, men of high standing, were witnesses in her behalf, including Alex. Chapaton, Sr., Alex Visger, Ex-Sheriff E. V. Cicott and Colin Campbell.

On the second trial Col. Atkinson, counsel for respondent, directed the court reporter to take down the closing argument to the jury of Chas. R. Whitman, the able, not to say brilliant young prosecuting attorney of Washtenaw county, for the purpose of taking exceptions to it. He did not take exceptions, but his request to the reporter has enabled us to publish this gentleman's eloquent argument, which is here given in full.

CLOSING ARGUMENT TO THE JURY BY CHARLES R. WHITMAN, PROSECUTING ATTORNEY:

MAY IT PLEASE THE COURT AND GENTLEMEN OF THE JURY:

In the first place let me say that the proposition is true, as stated by respondent's counsel and as will be given to you by the court, that before you can convict this defendant, before you ought to convict her or a defendant in any criminal case, you should be satisfied beyond a

REASONABLE DOUBT

of the guilt of the accused. But in this connection I call your attention to one word, that you may not fail to give proper meaning to this expression. You observe that the expression is not "doubt" alone. The statement is not that you must acquit unless satisfied beyond a doubt. The word "reasonable" is inter-

posed before the word "doubt," and it is your duty to recognize that this is for a purpose. It is undoubtedly true that to convict any innocent person is a great misfortune. It is a misfortune not only to the accused, but to the people at large. But you must also bear in mind that to acquit the guilty is also an injury and detriment to the whole public society. Let us consider for one moment, gentlemen, the bearing of this proposition. When you retire to your homes at night and lay your heads upon your pillows, what is it that, in the still hours of darkness, protects your lives and property? What is it, when you walk the streets in daylight, guards and shields your persons, and those of all of us, from the assassin's bullet and personal violence? It is not physical strength. In olden times, life and the rights of property were determined by individual prowess; those days are past. It is not by your strength or mine, or by the power of bolts and bars, that we hope to secure protection of life and property, but it is by the inviolable power of the law. If, gentlemen, every man or woman who was meditating the commission of an offence could know to an absolute certainty that punishment, even though slight, would follow as certainly upon the commission of the offence as pain will follow my putting my hand into the fire, we would have a solution of that great problem—the effectual suppression of crime. It is because the whole fabric of human society must be protected by our criminal jurisprudence; because to acquit criminals is to afford hope to criminals; it is in view of this that the word "reasonable" is in the words I have cited. It shall be a "reasonable doubt." Such a thing may exist as a "doubt" that is captious; that

is not based on judgment and good reason; not on the evidence in the case. Because, gentlemen, it is upon the evidence that you must determine what your verdict shall be. If the evidence itself produces a "doubt" based upon logic, and reason, and judgment, this, and this only, is the "doubt" contemplated by the provisions of the law.

Now, gentlemen, to deal with the evidence, in the trial of any case, there may be testimony undisputed establishing certain facts so conclusively that, upon them, the jury can have no doubt. Then there will be other testimony upon which there is contradiction. Let me first call your attention to the points which are so clearly proven that upon them there can be no contention. It appears that Mrs. Sarah Brew, of Detroit, is the housekeeper of Sophie Lyons, the defendant. It appears that defendant's household consisted—at the time this offence was committed—of herself, her housekeeper, Sarah Brew, and Sarah Brew's husband, with some little children. Those three were the only adults in the house. It appears, gentlemen, without any contradiction whatever, that upon the 6th day of October, a watch and chain were stolen here in Ann Arbor. They were expressed to the city of Detroit. The receipt was sent to Mrs. Sarah Brew. Whether it was delivered through the general post-office or at the house, is entirely irrelevant. That Mrs. Sarah Brew, upon receiving that receipt, instantly assumed that she was to go to the express office at Detroit and claim that package. In other words, gentlemen, it appears by uncontradicted evidence that Sarah Brew was an accomplice with some one who stole that watch. Now we have a starting point. Upon

this there is no pretense of contradiction. Sarah Brew, Sophie Lyons' housekeeper, was an accomplice with the person who stole that watch. A letter was sent to Sarah Brew; whether a letter was inclosed in the envelope, or merely the receipt was there, is immaterial. Sarah Brew takes that receipt in which the name "Sarah Smith" was given, and it is not the name of Sarah Brew, but instantly knowing and recognizing who "Sarah Smith" means, without any inquiry, she goes to the express office and demands the watch and chain. Is there testimony denying this? Sarah Brew was an accomplice with the one who committed the offence. Gentlemen, who is it?

I think before I proceed farther I may properly call your attention to something which is a part of your duty, as I understand it, in this case. You sit here as sworn officers of the law. You are not to sit here with your eyes closed, you are not to be misled by things which ought not properly to lead you, but you are to discover the truth. In that we all agree.

If in the trackless forest you are seeking to follow some inexperienced white man you look for footprints, broken twigs and branches. It will not take an expert woodsman to discover the track if it was not an expert woodsman who made it. But if this man is the subtle savage who seeks to escape pursuit, he breaks no twigs or branches; he

COVERS HIS TRACKS

in the soil with fallen leaves. You no longer expect to find these evident marks, but meet cunning with cunning, and educate eye and touch to find in the very

dew brushed from the grass the broken trail. When you sit as jurors, as detectives to ferret out crime, you do not expect these outlaws, these savages of society, to shout their guilt from the hill-tops. You turn from search for broad trails of guilt to those subtle points which, while less evident, are not the less conclusive to keen and observant apprehension. And the more true is this when it is the expert and not the blunderer who is the criminal. Gentlemen, you are here to discover the expert who has committed this offence, for it was done by fingers better educated to crime than those of any pickpocket who lives in Ann Arbor. Mrs. Cornwell went into floral hall with her watch and chain wrapped in her pocket handkerchief. Did any common pickpocket know she had it there? Did any common pickpocket secure that watch and chain in a crowd so swiftly that no person could know it? Was it an expert or a blunderer? Gentlemen, it is your duty, if you can, to follow this track through the forest, the trail of this expert, this adept, and find the person with whom Sarah Brew was an accomplice. Was it some one else than Sophie Lyons? If so, why was the watch sent to Sarah Smith? Have you any explanation here? Why should any person other than Sophie Lyons, who had stolen the watch and chain, send it to Sarah Smith, and send the receipt to Sarah Brew by mail? Sarah Smith is not Sarah Brew. If some third person is guilty, and meant to send the package to Sophie Lyons, the receipt would have come to Sophie Lyons also. But if it was stolen by Sophie Lyons, she would know Sophie Lyons was not at home, but here. Her housekeeper was there to receive it. To her then was intrusted the receipt by mail, and the

recovery of the package from the express office. Further, why was Sarah Smith selected as the one to whom this receipt should be sent and in whose name it was given? Gentlemen, you know this person in court as Sophie Lyons, but it is

NOT THE ONLY NAME

by which she is known. If a person is a crook, he may have two or three names, aliases, which among the sporting fraternity are fully understood to represent him. Such is the alias of Sophie Lyons. It is uncontradicted that, in Jackson, Sophie Lyons lived as Sarah Smith. Sarah Smith was Sophie Lyons. That is not denied. The express receipt was sent to Sarah Brew because she was at home and Sophie Lyons was not, but the package was sent to Sarah Smith, which is Sophie Lyons' other self, and the housekeeper was sent to claim the package. There is that in this case which cannot be explained away—this express receipt sticks like pitch to their fingers, and they cannot shake it off. There is no doubt this case has been most thoroughly defended. I cannot profess in my feeble way to contend with the ability and subtlety manifested by the most able and eloquent counsel who appear here on the part of the defense. It is not to be supposed that Washtenaw county can supply talent of that high order. The accused has been defended and defended well. The gentlemen who represent her are able, and cunning, and shrewd, and strong. They are powerful! Everything which legal talent, touching appeal and fierce invective can accomplish, has been done in behalf of this defendant. Why, gentlemen

even when an honest farmer's wife takes the stand, the wife of Othniel Gooding, of York, a woman who never told a lie in her life, a woman who stands unblemished in this county, even she can be branded by these counsel as a perjurer.

Col. Atkinson—Do you mean to say that I ever said any such thing of that lady?

Mr. Whitman—I do.

Col. Atkinson—It is false.

Mr. Whitman—The jury will remember it. I think it is so. I repeat, that to the best of my recollection, in commenting upon the testimony of Mrs. Gooding, it was pronounced perjury by the able counsel. If her testimony is true, then Sophie Lyons was in floral hall and by the victim's side when the watch was stolen. These facts exist, but they are not all. There are other facts in this case which can not be met. It is not only true that the watch and chain were stolen in Ann Arbor and sent to the accomplice in Detroit; it is not only true that we have traced the stolen property into the actual possession and custody of this defendant, but there is other testimony in the case. I was not here yesterday afternoon, gentlemen. It was physically impossible for me to be present during Mr. Lawrence's argument, but I am informed that Mr. Lawrence criticised the testimony of Mr. Joseph Watts that he saw Sophie Lyons in Ann Arbor that day. Gentlemen, it is to me a matter of peculiar surprise to find any counsel, or any man who is personally acquainted with Mr. Joseph Watts, undertaking to say that he is a man who says things concerning which he knows not. If there is a careful, conscientious, prudent, man it is Mr. Joseph Watts. If any of

you, gentlemen of the jury, are personally acquainted with him, your own experience will bear me out in that statement.

I will now take in their order the witnesses who saw Sophie Lyons in Ann Arbor, and endeavor to assist you in determining whether they are probably correct as to having seen her here that day. In the first place there is Mr. Hogan, the balloonist from Jackson. I remember that counsel in making his argument stated that Mr. Hogan had seen Sophie Lyons but two or three times. Gentlemen, it is not true. It is a mistake. Mr. Hogan has seen Sophie Lyons more than two or three times. Counsel very carefully refrained from cross-examining him as to the extent of his knowledge. To have done so would have revealed an extent of knowledge that would have been damaging to the defendant. Hogan lived in Jackson and knew Sophie Lyons. For weeks she had been known in Jackson as well as any person in Ann Arbor. Mr. Hogan, a laboring man, had seen her there and knew her. And while it is true that it would be utterly impossible for a person who has seen a lady—this defendant—only muffled and wrapped so that he could not see her face to swear to her identity from that external appearance ;—unless he can hear and recognize the voice or is so familiar with the person as to know the walk ;—while this is true, there is another thing equally true; if you have had occasion to observe the face of this defendant you will know that it is a face which once seen will never be forgtten. It is a peculiar face, if I may be permitted to say so. It is a face in which the features are strongly marked. I do not wish to go into detail. It might be offensive, and I do not wish to be

so, but suffice it to say that it is a face that will not be forgotten, which, if you see again,you will recognize upon the spot. I place no value upon the recognition, the identification, of this defendant by any persons who did not see her, or upon any testimony whose value depends upon seeing her pass merely upon the sidewalk. Mr. Hogan knew the defendant. She passed within a few feet of him. He instantly identified her, and there is a circumstance connected with it which fixes it in his mind which we could not go into on the trial, and the cross-examination declined to. A little boy came upon the stand. Children are keen observers, and frequently more so than older persons. That little boy had lived three years in Detroit across the street from this defendant. I suppose he had seen her a thousand times. I suppose the person of this defendant was as familiar to him as that of any member of his own family. Another thing fixes this identity to this boy—I may say the same of the others who saw her here that day—when they saw Sophie Lyons it was an unexpected spectacle. They had no reason to expect she would be here that day. Put the child in Detroit, where she lives and where she is often seen on the streets, it would not attract the attention so as to enable him to remember seeing her. But if you should meet to-day on the streets a man of notoriety whom you had never seen here before, you would observe him with a closeness that you would not under other circumstances. This little boy saw Sophie coming down the street, across the street on the path which would lead her by the store of Mr. Watts, where Joseph Watts identified her. True, on cross-examination, the boy would not

swear positively it was she. He had no expectation of seeing her that day, but he thought he saw Sophie Lyons. Another peculiar thing. These persons, Schaible, Hogan and Watts, agree to a general costume worn by this defendant. Now, gentlemen, we differ as to the accuracy with which we recollect such matters. I may say in regard to any one of the lady witnesses who have been upon the stand, I would not be able to state whether she wore a hat, or cloak, or bonnet; and while I could identify the face, I could not tell how she was was dressed. The testimony as to the details of defendant's dress will not be accurate, you could not expect it to be, yet we see a wonderful uniformity in this respect. All these persons put upon her a broad-brimmed hat and a loose-fitting circular garment. In the first place the loose-fitting circular garment appears to have been one of these waterproof garments which ladies wear. If close to it you could identify it as waterproof; across the room perhaps you could not. In all cases it is a broad-brimmed hat. And those are witnesses who are gathered from the four quarters, and come in here with no interest, or intention, or object in telling what is not true. They tell what they saw, and their testimony harmonizes as to the general outline of the lady's dress that day. Another witness, Mr. Bailey, you remember, was in floral hall at the time the larceny was committed. Sophie Lyons had been pointed out to him on the cars. He had sat close to her, and scrutinized her out of pardonable curiosity, and her peculiar face had abided in his memory. When it was announced to him that this watch had been taken, it flashed upon him that he had seen that same face in the sea of faces in floral

hall. Eddie Schaible saw her in the road she would take in going by Watts' store. In the door stood Watts, and as she passed he instantly recognized her as Sophie Lyons, whom he knew to be Sophie Lyons. If he was mistaken, why is it he was not cross-examined in that regard? No one claims he would tell a lie, or would tell what is not true. If the counsel think that he was mistaken, why did they not interrogate him upon the stand? Did they ask him a question? Not one. Gentlemen, there are

VARIOUS KINDS OF WITNESSES.

Those who testify as to facts which they know. There are those who are not certain, and there are those who are simply mistaken or are wilfully corrupt. Of all these there is one whom it is not safe to cross-examine, if you want to contradict his testimony. That is the straight-forward, honest business man, who knows what he is talking about. The quicker you get him off the stand, if his testimony is against you, the better. That is the reason they did not cross-examine Joe Watts. It would show reasons why he knew it was Sophie Lyons, for if she was in Ann Arbor that day she was not in Detroit, and this alibi is a farce.

I have another point for you to consider. I ask you, and in all candor, why was it that, when defendant came to Ann Arbor to answer to this charge, she came disguised—wearing a blonde wig to give to her brunette countenance the appearance of a blonde? Why is it that, pending the examination in the justice's court, pending the first trial in this court, pending this trial in this court,—why is it that at this very minute the defend-

ant sits there shrouded and veiled and covered as she is? Why is it? Is it modesty? Is it a sense of personal propriety? There are ladies in this audience who are as honest as any in this land, who do not think of disguising themselves. There is nothing here to shame this defendant or any lady who sees fit to sit in this room. Why is it? Why, gentlemen, I have been challenged here to show that Sophie Lyons was in Ann Arbor that day. I have been challenged to produce more testimony to prove her identity; but how closely and carefully she has taken away all opportunity for doing that. She does not dare turn and face that audience. Why?

You remember when Mrs. Gooding was upon the stand,—sitting there the honest farmer's wife that she is,—the question was asked if she could identify the defendant. The Court then ordered Sophie Lyons to unveil, and she sprang like a panther, tore her wrappings from head and face and rushed to the witness, thrusting her face close up to hers, with the manifest effort to startle and frighten and confuse this country woman,—changing the expression of her countenance with the glare of her eyes that few of us could see. But did you notice how carefully, in the midst of that pretended excitement, she again veiled her features before turning to meet the eyes of the audience which she must face to resume her seat? Why was it? Because back of her was a crowd in which were perhaps 100 persons who, when they saw those features, would say, "I saw that face on the 6th of October." For the room was filled with bright, intelligent students in all departments of the university, many of whom were here in October, 1881, on the streets and on the fair grounds; many of

whom may have seen that peculiar face, which, once seen, is never forgotten. It was for that and nothing else.

Sophie Lyons—(Sobbing violently)—"O, my little children!"

Col. Atkinson objected to the argument as unjust to the defendant.

Mr. Whitman—It is not necessary for me to say to those who know me that there is no bitterness towards this defendant. I may say truly that I am not capable of any such thing. I am the last man to stand here for the purpose of hurting this defendant, even though she should be guilty of worse offenses than that with which she is charged here. I believe that in every case the respondent should be tried on the charge with which he is accused. That the question of guilt or innocence should be determined by the evidence in that case. If I, in the argument of this case, am unfair and unjust, if I state things as being true which are not true, I ask you, gentlemen, to judge me harshly for so doing. But, gentlemen, if in the performance of my official duty, if in the performance of my duty to the people of this county, I shall comment to you upon a fact which appears not only in evidence but before your own eyes as a legitimate inference of guilt, then, gentlemen, you must attribute it to my duty, to the unfortunate truth of that fact, not to any desire to hurt the feelings of this defendant. Do not consider, gentlemen, that the administration of justice is in the spirit of revenge. The father who punishes his child, if he be a true parent, does it not from feelings of revenge or ill will toward the little unfortunate, but because he considers the welfare of his child. And so in our

criminal jurisprudence, in dealing with one who stands charged with an offence—that he is weak, that he is human, is no reason why he should be acquitted. We must not select friendless ones with none to protect. The arm of the

LAW MUST REACH ALL ALIKE.

We must not confine the machinery of the criminal law to those who have no wives, no husbands, no children. There must be no favoritism here. I would fail in my duty if I permitted you for a moment to think it was in your province to allow such a thing. I may in the performance of my duty lead you in the performance of your duty as jurors, to pronounce the verdict of guilty against some unfortunate being, and even though the circumstances be such that your hearts will bleed with pity, yet your verdict cannot be otherwise. If there is mercy to be administered, it is to be administered by the court. It is for the officers of the law, for the jury to say whether the offence has been committed. I know that you cannot claim that every one who commits an offence has no heart and no feelings. Nay, you cannot claim that even the wickedest man on earth, the most abandoned man who ever lived, is incapable of suffering, of feeling sorrow. But for that reason, gentlemen, you cannot fail to administer fully the laws which are designed for the protection even of that very individual as an atom of society which is shielded and protected by those laws.

I remember that the testimony of Mrs. Gooding was criticised because it was claimed there was some slight discrepancy between it and that of Mrs. Cornwell, as

to the person who picked the handkerchief from the ground. Gentlemen, minute differences between the statements of two persons do not necessarily prove that either lies. Let an assault be committed on the streets in view of a crowd. The question was, "Did A strike B first, or *vice versa?*" "Before the striking what words did A or B use?" You will bear witness with me, if you have attended such a trial, that scarcely any two persons will agree minutely as to the words said or the acts done. One person will catch one thing more prominently than another. Mrs. Cornwell was a feeble old lady, so feeble, in fact, that counsel kindly consented that we might read her testimony, it being almost a physical impossibility for her to go upon the stand. That feeble, nervous old lady testified in the re-direct examination that she did not know whether she picked her handkerchirf from the ground, or somebody picked it up and gave it to her. Weigh the testimony of Mrs. Cornwell, who undoubtedly tells this incident as she remembers it; and that of Mrs. Gooding, who undoubtedly also testifies to it as she remembers it. Mrs. Gooding testifies that this woman with the broad-brimmed hat took part officiously to get the crowd to stand back. What for? To hunt for the handkerchief. How did she know it was on the ground? The pickpocket who took the watch and chain and handkerchief from Mrs. Cornwell, took out the watch and chain and dropped the handkerchief upon the ground. There was but one individual in that crowd who knew that that handkerchief had been dropped upon the floor, and that was the one who dropped it. Why was it, in the crowd so dense that one could scarcely move, that the moment the old lady cried out that her "watch and

chain" were gone this woman with the broad brimmed hat, this woman who is identified by Mrs. Gooding as this defendant, told the crowd to stand back until she could find the handkerchief upon the ground? What made this woman get down upon the ground and hunt around among the feet of the people? Mrs. Cornwell does not say that she herself stooped and picked that handkerchief from the ground, and there is nothing in the testimony of Mrs. Gooding that it was picked up and handed to the old lady inconsistent with the testimony of Mrs. Cornwell. You observe that the effort to show that what Mrs. Gooding swore to was untrue falls to the ground. It is the common experience of mankind that professional pickpockets are very fast to turn and profess to give assistance to the party whom they have just robbed. It is a common trick among the profession to divert suspicion. It is one which is to be expected, and especially here in this crowd, where the person—the woman who had taken the watch and chain could not hope to escape by rushing away. For, the moment she tried, every one who saw her going would have cried "Stop thief!" A common thief would have tried to work out of the crowd as soon as possible, but the expert takes your purse, puts it into his pocket, and turns to you saying, "My dear sir, can I help you to find your property?" Gentlemen, I have pointed out to you the direct evidence of the guilt of this defendant, and that evidence is entirely sufficient, without other testimony. She was in that floral hall when that watch and chain were taken. She instantly fell on the ground to hunt the handkerchief whose loss she only could know. That she was on the fair ground and in the streets of

Ann Arbor that day is established. The property was stolen and expressed from Ann Arbor to herself in the city of Detroit. The express receipt was sent to her housekeeper, Sarah Brew, at Detroit. This express receipt we have taken out of the very hands of Sophie Lyons at that place. This, I say, gentlemen, without proceeding any farther in the case, establishes the guilt of this defendant beyond, I will not say a "reasonable doubt," but beyond *any* "doubt."

But something further.

MRS. THERESA A. LEWIS APPEARS AS A WITNESS

upon the stand. Her testimony, in my view of this case, is not absolutely essential. Under the facts as they appear, the guilt of this defendant is established without that testimony, yet we will examine it. I would have you understand, gentlemen, that I appear in this case as a defender of no one; the fact that a witness is produced by the prosecution secures from me no different treatment or consideration than if he were produced by the respondent. It is simply my duty to produce all available testimony bearing on the case, even though that testimony is not necessary, and the other is sufficient. Still, it is my duty to produce all, and I have done so. For some reason, gentlemen, there seems to have been made in this case a peculiar onslaught upon Mrs. Theresa A. Lewis. She has not alone been attacked with all the bitterness and venom of which counsel is capable, but it seems that from the time in Detroit when she commenced to track Sophie Lyons and Bob. McKinney in certain quarters, she herself has been hunted down, and a determination has been shown to

crush her, gentlemen. There may be something worthy of our consideration on the other side. Let us see. Let no injustice be done to this defendant, and at the same time, gentlemen, let no injustice be done to any one who has appeared as a witness against her. The testimony shows that for some reason the superintendent of police in Detroit offered Mrs. Lewis a reward to secure the conviction of Sophie Lyons and Bob. McKinney. At the time when the James Brothers in Missouri were robbing and murdering defenceless passengers, and rendering themselves a terror to the State and the whole country, Gov. Crittenden offered a reward for them, dead or alive, and the sentiment of the world applauded his act. Gentlemen, bad men may pursue a career so vicious, so intolerable, so hostile to law, that society absolutely demands that their course shall be stopped. In the absence of any showing to the contrary, we must assume that Superintendent Rogers, who is produced by counsel here as a decent man, is justified in making the offer which he did. The offer he made was to obtain evidence which would obtain the conviction of persons whose lives had been such as to render it for the good of the community that they should be put where they could do no more mischief. We must assume that the police commissioners of Detroit,—and I see that counsel here turns and attacks these gentlemen. He even laments that they live in Detroit. Yet we must assume that the men who are police commissioners, who are kept and maintained in their honorable position, who have in charge the life and property of the citizens of Detroit, that those men are honorable men, and that in determining that some criminals must be

secured, they were considering the welfare of the community. Witnesses whom counsel here bring upon the stand to attack the reputation of Mrs. Lewis, themselves say that before her good name had been undermined by the efforts, agency and co-operation of the persons whom she was following, they had known nothing against her. There is but one criminal charge against Mrs. Lewis. For this she was arraigned in the police court of the city of Detroit, as appears here in the testimony. The charge was that of stealing property from this defendant; and her reply was, "I took it from the defendant's house under the instructions of the superintendent of police for him to identify." This was denied by the superintendent and, after a lengthy examination, his honor, Judge Miner, took her word as against that of Mr. Rogers, and discharged her. Her memoranda in this very book, which I shall read to you, show she had become suspicious of the honesty of Mr. Rogers in his dealing with crooks in Detroit, and had begun to fear that he was simply planning and plotting to protect the very persons he pretended to be following. Up to the time of the charge against Mrs. Lewis that she had taken property from the house of the defendant, there was not a whisper against her. No one claims that she had stolen, or been guilty of any crime against the State or of an immoral act. The only charge was that she was poor and undertook the duty of a detective under Superintendent Rogers for pay, and the whole attack has arisen out of that proceeding in the police court. Bob. McKinney and others found Mrs. Lewis was on their track and obtaining evidence against them. They could go to work through channels they possess

which fairly honeycomb society. They could run arouud and repeat, "She is a liar," until others, impressed by the reiterating, come to say that they had heard this and that, and they would not believe her under oath, and the result is gained—to break and ruin the reputation of the woman so that it should not be good when she comes upon the stand. The reputation of some of you gentlemen of the jury may be ruined by such a course as that, and you cannot help yourselves. Gentlemen, Mrs. Lewis is certainly a human being, made of flesh and blood, subject to the failings of others. This is now the fourth time she has been upon the stand, subjected to the

MOST PITILESS AND MERCILESS CROSS-EXAMINATION EVER LISTENED TO.

For more than a year counsel have known her story. They have had opportunity by detectives to hunt and search and find a crack or crevice in the structure of her testimony. They have sought high and low, far and wide, and now Mrs. Lewis comes upon this stand a mortal. She was cross-examined most ably, most thoroughly, most keenly, by Mr. Hawley. Then, gentlemen, although it was against the rules of practice, and I was under no obligation to submit to anything of that sort, after John G. Hawley had pumped himself dry, Mr. Atkinson pumped himself dry also. And every question he asked only intensified your conviction of the truth of that woman's testimony. I tell you that woman made of flesh and blood could never come upon the stand and go through such a seige as that if her testimony was a lie. Now, gentlemen,

let us see what attacks have been made, what criticisms upon her testimony. It has been said that she receives pay for her testimony. If counsel mean by that that the officers of this county are intending to pay Mrs. Lewis, I make no reply. If it is meant that the police commissioners of Detroit intend to pay her something, then I say the police commissioners will show to Mrs. Lewis her receipt in full for her expenses, and will say, "You cannot get any more." How is Mrs. Lewis to get compensation for anything she does here except ten cents a mile and $1.00 a day? What is it that could give to a perjurer strength to carry her on the stand through such an ordeal as this? O, but, Col. Atkinson says, this is all done to show the power of some wealthy seducer in Detroit. What does the counsel mean? That Sophie Lyons was seduced? If so, heaven help the seducer! Counsel reads to you one passage from this memorandum book. He makes the statement that the passage was preceded by matters a year later in date. Also he says this professes to be memoranda made at the time the incidents took place, and claims that this was an original memorandum. I have the testimony here that Mrs. Lewis expressly swore the entries were made long after, as a mere recapitulation of events. Bear in mind there has been no evidence that the prosecution was disposed to conceal anything bearing upon the testimony of Mrs. Lewis. I offered all the assistance in my power to enable counsel to make a fair and complete examination of Mrs. Lewis. Now, when it came to the question of her having some papers, I joined in the request that she should bring them into court and let you look at them. Counsel states that on a former trial

she testified from a book which is not here. That is not true. The one from which she testified is here. That is the identical book.

Col. Atkinson insisted that he was misrepresented.

Mr. Whitman—I once more repeat, gentlemen, I say these books were brought into court by Mrs. Lewis, I joining in the request with counsel for the defense that any book or paper she might have bearing upon this case should be brought into court. This book was produced. It was used upon the former trial to refresh her recollection. Her statement in regard to it was that she had various books, had one in the pocket of one dress, and another in another dress, and she would take out the book in the pocket of the dress she had on, and make a memorandum. She did not make these memoranda in order. That is my recollection in regard to the black book.

In the first place this book——

Col. Atkinson—I do not understand that this book is in evidence, except what has been read.

Mr. Whitman—Gentlemen, when these books were brought, counsel used those parts from which, as he claimed, it appeared that witness was testifying to what was not true. I offered the whole books in evidence. Counsel objected. I had no right to put them in, and he had.

Col. Atkinson—Counsel has no right to comment upon evidence that was excluded.

Mr. Whitman—I am commenting properly upon the failure of counsel to connect certain pieces of evidence with others. If counsel puts in his evidence piecemeal, I may comment upon his omission to put in the rest,

especially when he argues to the jury that if the whole of that book were in evidence it would contradict her testimony.

It ought to be true of the argument of a case before a jury, as in ordinary business transactions, that fairness and candor of dealing will command confidence. Dealing which is different from that ought to excite suspicion and distrust. It is possible that any counsel in arguing a case may, without intention, misstate the testimony, but, gentlemen—and I ask you to apply it to myself as I stand here and present this case to you—if you believe that any counsel is wilfully and deliberately trying to mislead you as to the testimony, it is your privilege to believe that the dishonesty goes farther. Gentlemen, a long and labored argument was made this morning, a most earnest effort, to break down the testimony of Mrs. Lewis upon the ground that that leaf which was passed through the hands of these jurors with the statement that she testified it was made at one and the same time, showed upon its face that she had sworn to a lie. I sat in my seat and listened to that statement. I permitted counsel to make it, because I knew that the gentlemen sitting upon the jury here would understand the falsity and dishonesty of such an argument. Now I will read to you from the testimony of Mrs. Lewis in that regard, and we will see. The point was that she testified that she wrote that page on the 5th of October, and the force of the attack lay in the fact that it recited events which occurred on the 6th. Therefore Mrs. Lewis had lied, and if she had lied in that respect she had lied in others also. Am I not right, gentlemen?

Here is Mrs. Lewis' testimony, which the stenographer has copied for me.

[Mr. Whitman read from the same, showing the leaf was written after the 6th of October.]

And yet counsel planned a deliberate attack upon the veracity of Mrs. Lewis, deliberately asked you by your verdict to pronounce her a perjurer, because she had sworn that paper was made on the 5th of October, and on its face it shows it could not have been. Gentlemen, such arguments as that cannot win verdicts from the hands of honest and intelligent jurors, and they ought not.

There is something further. It was insisted here before you that Mrs. Lewis' testimony was false, and it was intimated that the falsity of that testimony could not be ascertained because—and the counsel used this expression—because the cross-examination was "hampered." Is there any man upon this jury who thinks that I "hampered" the cross-examination of Mrs. Lewis? Any man who thinks that, from the beginning to the end of the trial, I have "hampered" counsel upon anything they could drag out, material or immaterial, that had or was claimed to have a bearing upon this case? I protest I have sat here with the earnest effort to get at the truth, whatever it might be. If that establishes the innocence of this defendant, I trust that I am man enough and honest enough to ask you to acquit her of this charge. I protest, gentlemen, that this has been a fair trial. I protest that every latitude under heaven has been permitted to counsel in taking the testimony in this case. I do remember one instance where I did not let them run.

That was in Mr. Rogers' testimony, when counsel put that man on the stand and tried to make him swear to something that was not true; tried to put words in his mouth and instruct him how he was wanted to swear. I objected. I declared that that man knew enough to tell what he knew without being instructed.

It has been urged here, although there is not one scintilla of evidence to base such a thing upon, that

PERSONS IN DETROIT AND JACKSON

had been laboring to secure the conviction of this defendant, and are in some measure responsible for this trial. I give counsel and the world now to understand that I take upon my own shoulders the responsibility of this prosecution. And when I take upon my hands the prosecution of a criminal case, I care not who it is who is prosecuted,—I ask no man's consent. I ask nothing but the approval of my own conscience and my own judgment. If there have been influences abroad anywhere which were exercised against this defendant, I have never seen nor felt them. Nay, I have been conscious in the prosecution of this case of a weight, a push, an energy and labor seeking to counterbalance all the efforts of the prosecution. The counsel argues that Rogers' testimony falsifies that of Mrs. Lewis in an important particular. Mrs. Lewis swears that on the evening of the 6th of October, she reported to Mr. Rogers that Sophie Lyons had come out here. Rogers denies this. Who is telling the truth? On the morning of the 7th of October, the express agent was notified not to deliver this package. Why? The parcel was taken and given by Mr. Seeley to Superinten den

Rogers. Why? If the information came from Mrs. Lewis to Superintendent Rogers, as she swears, on the evening of the 6th, then early on the morning of the 7th the Superintendent could have notified them to look out for parcels coming to Sarah Smith or Mrs. Lyons. But if Mrs. Lewis did not tell that, if it be true that a conspiracy was formed to make up a case against respondent and some one came out here, found out Mrs. Cornwell, stole the watch and sent it to Sarah Smith for the express purpose of having Sophie Lyons arrested,—a very thin plot, I think there might have been a much better arrangement,—if that was the scheme, then Mr. Rogers must have been in the conspiracy; Mr. Seeley, the express agent in Detroit, must have been in the conspiracy. Nay, if such a conspiracy existed, some one came to Ann Arbor, went on the fair ground and committed this theft, and did not even take pains to see that the day it was done Sophie was out of Detroit. They were even so indiscreet in their conspiracy as to steal the watch in Ann Arbor on the identical day she was on the streets of Detroit. But, gentlemen, that is very "thin." That is very poor stuff to present before a jury in the face of the facts as they appear in this case.

Now, gentlemen, to meet this case, we come to a so-called alibi. It is right and proper that you, sitting here as officers of the law, carefully and intently to analyze this testimony and discover the truth, should be warned of the

CHARACTER OF AN ALIBI.

It is the favorite device of criminals to escape conviction. It is the last resort, I may say, in the absence

of anything else, by which to secure acquittal. There is testimony of his presence at the place, and of his guilt. There is seemingly no question that he ought to be convicted, but he proves that he was somewhere else. You, of course, perceive how easy it is to manufacture an alibi. Your common intelligence shows you how readily it may be done, how commonly it may be done. The accused has an almost unlimited time in which to prepare his defence. This alibi may consist of mixed testimony—that of persons who think they are swearing to the truth, and that of those who know they are swearing falsely. And in this mingling of the mistaken with the false, frequently juries are hoodwinked and misled, and the guilty escape punishment which ought to follow their crime. You should understand the facility with which a person charged with crime may create an alibi, one whose acquaintances, friendships and associates run out through all the strata of the class that may be most efficiently used for that purpose. You should look into an alibi closely and critically. From the necessity of the case the persons who are brought to establish the alibi are persons of whom you cannot be forewarned. The names of the witnesses on the part of the people are endorsed upon the information, and the defense have the opportunity of knowing every witness the prosecution will bring. It is not so of witnesses on the part of the defense. The witnesses to be sworn to prove an alibi cannot be anticipated. Every witness comes a total stranger to me as to you. The alibi may be so planned and shrewdly disclosed that it is almost impossible to meet the witnesses when produced upon the stand, from the very fact that the prosecution,

being unable to know who and what the witnesses are, is obliged to take their story as they tell it. That is why it may be done so easily. It is your duty to examine with more than usual closeness the character of these alibi witnesses and their testimony. In the first place, gentlemen, I may remind you that when I speak of events occurring to-day or yesterday, I can be certain of the time, but when I first speak of them a year and a half or two years afterwards, then, gentlemen, dates become uncertain. It is fair to say of witnesses who were in a position to know at the time of the first trial one year ago what the issue here was, and that an alibi was to be established, who were known to the defense, who failed to appear then, and come here for the first time to day, you are to examine their testimony with more than common closeness and shrewdness. The presumption is strong that it is made up. The presumption is almost irresistible that some one has gone to these witnesses and said, "See here, do you remember seeing such a person at such a time and place?" The witness says, "Well, I don't know, I don't remember." "Don't you remember meeting her at such a time?" Finally he says, "Well, I declare, I don't know but I do remember it." And the next thing is that we have him on the stand and swearing, "I saw her." I say the presumption is almost irresistible that such witnesses are entitled to no credit or consideration at your hands.

But, gentlemen, let us consider here together a few minutes what this alibi is. The defense elect to establish an alibi. They must stand or fall by their alibi. It comes in here as a whole. I do not see how they can

separate it. The alibi consists of averments that on the 6th of October when this watch was stolen, at a quarter to ten, at noon, and in the afternoon, Sophie Lyons was in Detroit. Here is the alibi. Here is every averment which they state to establish it. Let us see if they succeed. Of course, gentlemen, I have pointed out to you before that you and I will have to take the testimony as they bring it here. But, gentlemen, neither you nor I nor anybody else is obliged to believe a man knows what he is talking about simply because he swears to it, or to believe he tells the truth simply because he swears to it. Let us take the counts in their order. In the first place, this eminent practitioner, this clean and noble attorney from Detroit, Mr. Jackson, appears, the peer of any one. Why, gentlemen, it only requires a man to appear as a witness in a case for him to receive at the hands of his counsel a eulogy over his character that is only second to that which is pronounced upon his death. It is astonishing how the virtues of a man increase in proportion to the necessities of the case. And here once more I am obliged to challenge a statement made by counsel. The counsel told you in speaking of Jackson that he was an old acquaintance, or had known Sophie Lyons. Now, gentlemen, I will tell you what is the truth about that testimony, and I will ask you to correct me if I am in error. My recollection is that on the 5th of October he saw Sophie Lyons get on a street car, and while he was standing on the street car somebody said that was Sophie Lyons, and he said that was the first time he ever saw her, and he knew her then because somebody said it was she. She got into the street car and rode down the street. At a quarter to ten on the 6th of

October he was walking through the corridor of the city hall, and says he saw her, and the statement of counsel that he stopped and watched her go somewhere else is almost as accurate as the statement of counsel yesterday. There is nothing to fix that event in the recollection of the witness. You cannot tell the person you met a week ago, and if you remember the meeting, you cannot the day without there is something to connect the two. Here is the point in Jackson's testimony. Remember how closely it is proven that the officers watched all the forenoon of the 6th. How in the mischief did Sophie Lyons get down town without their seeing her? That was shown for the purpose of proving that Mrs. Lewis did not get in the house. But you will also remember that Mrs. Lewis entered the house from the rear, from 24th street, at the side entrance, which was hidden from the view of the officers, but the Fort street car which Sophie Lyons would take in going down town was open to the inspection of the officers all the time. The watch does not prove that Mrs. Lewis did not go in there, but it does prove that Mrs. Lyons did not go out. We come to noon. A witness was put upon the stand by the name of Bradford. We have Bradford, and Stadler, and Gilman about noon. Bradford swears that at noon on the 6th of October he saw Sophie Lyons and Bob. together near Mechanics' block, right across the street from the city hall, right openly in the city at noon, right by the city hall. Gilman swears that he saw Sophie in the corridor of the city hall the day he was there with Paddy Ryan. Gentlemen, in this connection I want to show you something curious about Gilman's testimony. You remember Gilman swore he

is the man who kept a restaurant in Detroit, swore Paddy Ryan came to him on the morning of the 5th, and he and Paddy were in the city hall and in the chief's office. Counsel questioned witness in this way: "On the day you paid that rent did you have occasion to go to the city hall?" etc. Counsel asks, "Had you been there the day before?" That is leading the witness. I call your attention to the persistent effort of the learned counsel to make Gilman swear he was there twice. "Had you been there before?" "What can you say as to your being in the city hall before with Mr. Ryan?" Then again: "What time did you say you went into the city hall with Mr. Ryan that day?" "I think between 11 and 12,"—the same time that Berger saw him in the front office, and Williams and Manning. "Will you state whether at any other time you were in the city hall?" "I cannot state." "Can you state whether you had been out with Mr. Ryan the day before, whether you had been out with him any other time?" "Yes I had been out" —but he does not say in the city hall. See the effort counsel makes to get Gilman to swear he was in there twice. Why? In the trial of cases we only want facts. As a matter of fact Gilman and Paddy Ryan were in the chief's office only once. Gilman knew it. But the difficulty was that in some way it had been learned that the proof would show here that the day Paddy Ryan and Gilman were in the chief's office was on the *5th* and not the *6th*. Then they tried to make out that although the witness was in the chief's office on the 6th he was there the day before also, that they might get two days so they could say:—"Very well, if one

day was the 5th the other was the 6th." Was that honest? Was that right? That disposes of Mr. Gilman. We come to Stadler, the officer who came down stairs. Let us see if there was any effort in his case to make the witness swear to what was not true. Remember he was employed in the

NORRIS MURDER TRIAL.

When did that commence? The 6th of October, 1881? The fact is that trial commenced on the 5th of October. Stadler was brought here from Detroit to swear, if he could, that he saw Sophie Lyons on the 6th, and to try to fix it at the city hall. "Did you have any occasion to go down stairs on the 6th or second day of the trial?" Why was that question asked and the question before that? Was that for the purpose of notifying the witness that he had made a mistake, that the first day of the trial was on the 5th, and he must swear it was on the second day he saw her or it would do them no good? Was it, or was it not? "I went down on the 6th of October, I think. I was an important witness, etc." "What time of day? After 11 o'clock?" "Probably a little after 11 o'clock." The truth of the matter is the testimony shows that Sophie Lyons and Bob. McKinney were in the city hall and about the city hall between 11 and 12 o'clock of the 5th. That is the only day they were in Detroit. Counsel again asks: "This would be the 6th that you went down?" "Yes." "You answered it was on the 6th of October, and the second day of the trial;"—he had never sworn that. "*No sir, it was the first day of the trial.*" They bring Mr. Maitland, the court stenogra-

pher, who swears the first day of the trial was the 5th, and Stadler fixes the time that he saw Sophie Lyons as the first day of the trial. The first day he said was the 6th and it was really the 5th. Stadler could not swear to what he ought. Counsel tried over and over to make him see it and he could not. Now we come to the afternoon alibi. First we have Crissup's testimony. He saw Sophie Lyons from 2 to half-past 2, just as he was coming down from dinner. He was on his way from dinner when he saw Sophie Lyons, and at the same time he saw Baker, who told him that Phil. Van Dyke was dead; but Phil. Van Dyke was not dead until after 3 o'clock. What are you going to do with that? The keeper out there at whose place Van Dyke and Baker stopped, says they were there at 3 o'clock,—Phil. Van Dyke was not killed until after that,—he stayed there some time; went on up the road two miles farther, and the man into whose house Van Dyke was carried, came down there and at 4 o'clock told the keeper of the accident. Phil. Van Dyke was not killed until after 3 o'clock, and there is no contradiction of that. But Tom Crissup, the fellow who takes fur cloaks from Bob. McKinney and lets money on them, * * * is brought here at this late day upon this second trial for the first time, and swears that on his way down from dinner on the 6th day of October, he met a man who told him Van Dyke was killed. And Phil. did not die until 3 or 4 o'clock. That is Crissup. Do I state his testimony correctly? Now take Baker, who told this. Gentlemen, there is this peculiarity about a man when his testimony is not true. You go to work and

COOK UP AN ALIBI,

get two or three fellows together and buzz them, and say this thing was so and so. They say, "Yes;" but the first they know they get lost and taken back. Somebody comes here and swears to what is not true; swears, for instance, he saw Robison, the County Clerk in his office on his way down from the court room, and had a conversation with him. Presently I ask him which way he went down stairs. If his testimony be true, his answers will all accord. There is no doubt about that. But if he is swearing to what is not true, the first thing you know, he will swear he went down stairs the other way, which does not lead through the clerk's office. That is Baker. Baker said, when asked if he had been drinking, at first, "No." Afterwards he admitted that he drank at two places out on the road to Hamtramck with Phil. But we bring a gentleman who keeps a saloon in Detroit, and he swears that just before they started on that drive out to Hamtramck, this identical Baker, who did not drink but twice that day, drank three times at his place. On the way to Hamtramck an accident happened, which, counsel says, even now clouds Baker's life. Why does it? Was he so drunk that he caused it? If that is not it, what is it? If it was not his fault, why should it cloud his life any more than Atkinson's? It appears he got five drinks; we don't know how many more. When a man gets five drinks he does not know anything about how many he gets afterwards. The accident happened; hands were called from the field; they put Van Dyke on a cushion and carried him in. Baker stayed a while at the house, and, getting into the buggy, came down

town, knowing that Phil. Van Dyke was dead or dying; knowing that the man whose death clouded his life was dying, and he must get a physician, and it required haste. If, at this instant, some person should fall fainting at my feet, and I should rush for the doctor, I would not know who was in the way. Baker's story is that he came rushing down town to get doctor Richards, and first went to Mrs. Van Dyke's on Jefferson avenue.

The Jewish synagogue stands at the southeast corner of Antoine and Congress streets. Antoine street runs north and south; Congress runs east and west. The Jewish synagogue stands on the southeast corner of those two streets; Jefferson avenue runs east and west parallel with Congress, only it is two blocks south. Mrs. Van Dyke lives on the south side of Jefferson avenue, half a block west of Antoine street; Dr. Richards' house is three doors west of Antoine street on the north side of Congress street; Mrs. Van Dyke lives on Jefferson avenue in the middle of this block, west of Antoine street, on the south side of the street where Baker went to inform her of the accident; he ran across the street to tell Van Dyke's brother George, which carried him on the north side of Jefferson avenue. He is now half a block west of Antoine. In going from there to Antoine he goes right straight east along the north side of Jefferson avenue. That naturally carried him to the west side of Antoine street; that would be the first sidewalk he struck. He passes right up Antoine street until he comes to the corner of Congress, and goes diagonally across the road to Dr. Richards, when, rushing over that route as he did, he saw Bob. McKinney and Sophie Lyons on the corner, by the Jewish synagogue on the

east side of the street, and went as close to them as that chair, where the reporter sits, is to that desk; say three feet. See how they fix it. He had to go by Bob. and Sophie to make it hitch with Crissup. So now they will have this man, when rushing madly for the doctor, run way across the corner to the Jewish synagogue. What for? Would you have done that under the circumstances? If Baker had seen Sophie Lyons that day he would not tell any such absurd story as that, because truth is never absurd and never can be; it is always reasonable and consistent; but the false is not, it is inconsistent. The man who swore he had not had a drop, but whom we prove had had five drinks; the man rushing madly for the doctor for Phil. Van Dyke, who swears he did not see another man, woman or child all the way from Hamtramck until he saw Phil's brother near Mrs. Van Dyke's; this man, when he came where Bob. and Sophie were, whom he did not know intimately, picks them out and identifies them only in all that trip of six miles. Is there a man on this jury who will swallow that?

We come now to the two young men out of Mr. Atkinson's office. With a great deal of impressiveness and gusto, while making his argument, counsel got so close to Mr. Babbitt, my associate, that I thought he was going to hit him, and wanted to know if Mr. Babbitt meant to intimate that he would bring the boys out of his office to swear to what is not true. I don't know that there is any particular

HALO OF GLORY

surrounding a boy that comes out of Atkinson's office. As I understand the case, he has to take the same

treatment with anybody else, and is neither any better nor any worse, and his testimony is to be subjected to the same criticism as anybody's, and I pronounce this criticism here. When Col. Atkinson was to defend Sophie Lyons and to attempt to establish an alibi, and had two clerks who saw Sophie Lyons in Detroit that day, and failed to bring them *on the first trial*, the presumption is that their testimony is not true. It is *too late* to come here with such a narrative. Here is Ross, who is not a justice of the peace, but is going to be, and a man who is a justice in Detroit is a bright man. They have some bright men in Detroit—justices—they are a

REMARKABLE SPECIES,

remarkable men, and it does not make any difference how absurd a story they swear to, we have to inhale it. Ross went to dinner at noon, and on the way from dinner to the office, where he arrived at 2 o'clock, he heard of the death of Phil. Van Dyke, who did not die until between 3 and 4 four o'clock. And he swears that when Sophie came into the office he was reading an account of Phil. Van Dyke's death in the Evening News. Ross heard of Van Dyke's death on the way to the office from dinner, at 2 o'clock; he had an edition of the News; he did not say that after the four o'clock edition was out he went and got one; he does not say anybody brought him one; but he does swear that after getting there at 2 o'clock he was reading it when Sophie Lyons came into the office and was there alone. Four o'clock was the first edition that could contain an account of that death. Jones comes on to the stand from Atkinson's office. He swears he knows it

was the 6th, because he went to jail twice that day—in the forenoon and in the afternoon—to see some man, and was on his way back from the jail in the afternoon when he saw Sophie Lyons at the foot of the stairs; and pretty soon he swears he don't know whether he went to the jail in the afternoon or not. He swears he knows he saw her because he came from the jail in the afternoon and the forenoon, and in the afternoon he saw her coming down from the justice's office; and in a minute he swears he don't know whether he went to the jail that day, but he saw her, and he swears, "I have a dim recollection that Sophie came into the office that afternoon." Why is it *dim?* If this man Jones is competent to swear as a matter of fact that he saw Sophie Lyons on the street that afternoon, why cannot he swear as a matter of fact whether he saw her in the office that afternoon? If his recollection is *dim* as to whether she was in Atkinson's office that afternoon, his recollection is equally dim as to whether he saw her at all. Why is it *dim* one minute and so *clear* another? He says that he came back from jail and saw Sophie Lyons, and went into the office, and Ross was sitting in the adjoining room. Ross swears that before 4 o'clock Sophie came in and he talked with her, and Jones did not know anything about it. Gentlemen, we have the alibi all boiled down. What do you think of it? All the testimony brought here that was ever produced before is the testimony of Bradford and that of Stadler. Gilman is new, Jackson is new and Ross is new and so is Jones, and one is just as good as another. But Stadler saw her on the first day of the Norris murder trial, which was the 5th of October. Gilman saw her the day he and Paddy Ryan were in the

chief's office, which was the 5th. Bradford saw her at noon when she and Bob. were on the steps of the city hall, and that was the 5th of October when they were there and were seen there. And on top of this is one thing that cannot be met. At four o'clock of the afternoon of the 5th of October three officers were put to shadow Sophie Lyon's house and see if she came out of that house, and they remained there until noon of the 6th. On the 6th the chief of police from Cleveland was in Detroit, and a warrant was issued for her arrest.

THE WHOLE POLICE DEPARTMENT WAS HUNTING FOR HER,

yet she was walking the streets; was on the steps of the city hall, and in front of Mechanics' block, and the whole police department could not find her. Do you believe it? Do you believe it? I want you to think that over, gentlemen. The watch was started on the 5th of October at four o'clock in the afternoon, three detectives were watching her house until noon of the 6th, the whole detective force were on inquiry; is it probable that she would have stood right on the steps of the city hall, right in front of Mechanics' block, right in the heart of the city, from 10 o'clock in the morning until 5 in the afternoon, and never an officer find her? Gentlemen, that disposes of the alibi.

There are one or two other things that I wish to refer to briefly. A statement has been made here that there is something in my own official conduct which is designed to frighten the jury. Gentlemen, I want it understood that I have never said, and I do not to-day, that there is upon this jury a man who would be so dishonest that he will not go into the jury room after

hearing the argument in this case and the charge of the court, and render a verdict in accordance with the evidence, under that instruction. I do believe, gentlemen, and I have the right to state it, that an imprudent statement of opinion was made by a juror in this case. I regret it, and believe it was ill-advised, but, gentlemen, I know that from the other jurors there has not a whisper or intimation of the sort escaped, in any way, shape or manner. I believe this jury to be an honest one. There is in me no disposition or desire, even if I had the power—which I have not—to influence the verdict of this jury by anything else than the evidence that shall appear in this case. Gentlemen, I own no man upon that jury, and I have faith enough in you, and in human nature to believe that no other man can own a fellow citizen in the jury box. I do not believe it. If I felt otherwise, than that you, gentlemen, would take this case and go into the jury room and render a verdict in accordance with the evidence and the law, I would not have the least faith to make an argument before you to-day. I would not have done it. It would be vain and useless for me to speak to you if I felt the case was prejudged, and though one gentleman shall have been premature and unwise in making some remarks, yet, gentlemen, in calling the attention of the court to that fact, I have merely done what my oath of office requires me to do.

It has been said here by counsel, I know not for what purpose, that in some way he has received assistance and words of hope and encouragement from members of this bar. Gentlemen, I, in behalf of the Washtenaw county bar, fling back the statement as untrue, as necessarily untrue. The gentlemen of the Washtenaw

county bar are honest men, they are honorable, they are lawyers; they are men who are incapable of permitting themselves to form an opinion about the truth and right of any case until, not only the evidence shall have been completed, but the arguments of counsel been heard. Because, gentlemen, I tell you that no man can hear the testimony in a case from one end to the other and be qualified to pass a verdict upon that testimony until he shall have heard an argument made upon that evidence.

You may sit there, gentlemen, with the utmost intelligence and shrewdness, and yet points will occur in the testimony, points of vital importance bearing directly upon the most essential parts of the case, which necessarily escape your attention until they are pointed out to you by counsel who are trained to do that, and who will gather the facts together and show you how they bear one upon another; then, gentlemen, if counsel, in making his argument, shall state the testimony to you truly, if he shall bring these facts together, then, and then only, are you qualified to render a verdict. So I say, in behalf of the Washtenaw county bar, there is not a man who will come to a conclusion in this case until he shall have heard all the testimony and all the argument of counsel. There may be men in this county, who irrespective of common honesty and justice, will, on general principles, give their comfort and help to all who are charged with crime; as for those men my brother is welcome to their sympathy, I never ask it and never will take it.

Gentlemen, a statement is made here by counsel. I cannot imagine it to be done for any other purpose than what I deem to be an improper one, referring to the

other trial and the decision of the law upon the record, very manifestly giving the impression that the supreme court has decided that Sophie Lyons did not steal this watch and chain. I do not think there is a man upon this jury who is such an ignoramus as to think that the decision of the supreme court has anything whatever to do with the guilt or innocence of the defendant. That, gentlemen, is always decided by the jury. The only men who have ever passed upon that is the jury in the other case, as it will be by you in this case. That is all. The supreme court never had and never could have any more to do with the guilt or innocence of Sophie Lyons than his Honor who sits upon the bench there. It has no possible control of the matter. The rulings of law made in this court are taken down, and these go to the supreme court, and upon these it passes. There is nothing presented as to the weight of the testimony, or question of fact.

I have pointed out to you as far as it seems to me necessary the material points in this case, as far as I am concerned; when my voice shall have ceased, my duty will have been done in this case. In determining what my own course is or ought to be in this or other criminal cases I shall be, as I know, gentlemen, you will be, governed only by considerations of what is right. It is true that no innocent person should be convicted, but it is equally true that we should let no guilty one escape. When a guilty person escapes, thieves and crooks and scoundrels all over the land are filled with joy and gather comfort, hoping that they may meet the same fortune. When the guilty are convicted, the rascals mourn and honest men properly rejoice. I have said, gentlemen, I do not stand here for

the purpose of asking you to do anything that your own true judgment and conscience shall not direct, but I do ask you, because you are men in whom I have confidence, to do right though the heavens fall. There is no fear or intimidation that can reach you. I have endeavored to perform my duty fully, fairly and fearlessly. I ask the same of you, no more, no less. Let no act of yours shake from the foundation of society a single rock which holds the fabric firm that protects us all. I have not at any point through this case asked any verdict at your hands because of any claim that the defendant is a bad woman. Nothing of the sort, gentlemen, but you must consider something here. You have heard the plea that has been made that you should not convict some one upon general principles. Beware! Take care that that cry does not cause you, in your fear of convicting upon general principles, to repel evidence that is legitimate to secure a conviction. For fear of such a conclusion, be fearless, gentlemen, as I know you will be honest! Be true to yourselves and the oaths you have taken as jurors, and I have no fear but, whatever your verdict may be, it will be a true and an honest one. Consult your own consciences and your own good sense, and render a verdict which shall not be a shame to yourselves or the people among whom you live.

Chas. R. Whitman, Prosecuting Attorney, and *J. Willard Babbitt* for the People.

John F. Lawrence, *John G. Hawley* and *John Atkinson* for Defendant.

Superior Court of Detroit.

ERNST WEIGMAN,

Administrator of the Estate of

WILLIAM WEIGMAN,

Deceased,

vs.

THE FORT WAYNE AND ELMWOOD STREET RAILWAY COMPANY.

Extract from an Argument to the Jury.

Plaintiff's intestate was killed while driving a delivery wagon across the track of the street railway of defendant at the intersection of the street railway and Twentieth street, Detroit. There was an icy ridge at the point of crossing, caused principally by the acts of defendant by the aid of their scrapers and snow plows.

Plaintiff recovered a verdict and judgment for $1,500.

During the progress of the trial the mother of deceased sat in court listening very attentively to the testimony. While one witness was testifying he said something that wounded her mother heart, and she cried out that the fact was so and so. There was a titter around the court room. She did not further interrupt the course of the proceedings.

In his argument to the jury one of the counsel for the plaintiff alluded to this incident substantially as follows:

"The mother of the dead boy, cut off so suddenly before his time, yesterday broke out in a cry which was not in strict accord with the rules of court or the wishes of counsel. But while a smile crept over the

faces of some of those sitting in the court room, a deep shadow passed over her soul; while to some, her German exclamation was in the line of comedy, to this mother thus bereft of her boy, the hope and prop of her declining years, his taking off was a tragedy of most awful import.

There is a concentration of affection in a mother's love that at times overleaps the bounds of the conventionalities of society as fashionably constituted. Can we not pardon this in her? Who that has been the object of a mother's pure devotion would stifle a cry of grief from a mother bereft of her boy, even though thereby the proprieties of a court of justice are, in form, disturbed?

Sidney Dobell has described this singleness of a mother's devotion most happily in his poem of 'My Boy.'*

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* A sailor boy's mother, walking down by the quay, and seeing a sailor, cries out:

"Ho! sailor of the sea,
How's my boy—my boy?"

"What's your boy's name, good wife,
And in what good ship sailed he?"

"My boy John—
He that went to sea;
What care I for the ship, sailor,
My boy's my boy to me!

"You come back from sea
And not know my Jonn!
I might as well have asked some landsman
Yonder down in the town,
There's not an ass in all the parish
But he knows my John.

"How's my boy—my boy?
And unless you let me know,
I'll swear you are no sailor.

So here the mother of the boy, the value of whose life, so far as it can be measured by the standards of this world's coinage, is to be weighed by you in the balances of justice, was oblivious to judge and jury, counsel and people, in her cry of anguish."

E. S. Grece and *C. B. Howell* for Plaintiff.

E. H. Sellers and *H. H. Swan* for Defendant.

Blue jacket or no,
Brass buttons or no, sailor,
Anchor and crown or no;
Sure his ship was the Jolly Briton."

"Speak low woman, speak low,"

"And why should I speak low, sailor,
About my own boy, John?
If I was loud as I am proud,
I'd sing him over the town,
Why should I speak low?"

"That good ship went down."

"What care I for the ship, sailor?
I was never aboard her;
Be she ashore or be she aground,
Sinking or swimming, I'll be bound
Her owner can afford her.
I SAY, HOW'S MY JOHN?"

"Every man on board went down,
Every man aboard her."

"HOW'S MY BOY—MY BOY?
What care I for the men, sailor?
I'm not their mother—
How's my boy—my boy?
Tell me of him and no other!"
HOW'S MY BOY—MY BOY?"*

The poem is printed as an entirety. In his argument counsel used most of it by intermingling it with the portion of his argument above given.

Jackson Circuit.

THE PEOPLE

vs.

FRIEND VAN EVERY,
VINA DUTTON AND
JAMES RANNEY.

Complaint—Date of Committal of Offense—Belief of Affiant—Jurisdiction.

Information for larceny.

Defendants moved to quash the information on two grounds, viz:

1.—Because the complaint before the justice did not state the year in which the alleged crime was committed.

People vs. Gregory, 31 Mich., 371.

The year was correctly stated in the warrant.

2.—Because the complaint charged the crime upon affiant's belief, and not upon his knowledge.

People vs. Heffron, 19 N. W. Rep., 170.

No fault was found with the information as framed, but defendants insisted that the court acquired no jurisdiction under the complaint made before the justice.

The Court, GRIDLEY, J., Held: That the proceedings were sufficiently regular to confer jurisdiction, and denied the motion.

(May, 1884.)

Frank Hewlett, Prosecuting Attorney, for the People.

A. E. Hewett for Defendants.

Wayne Circuit—In Chancery.

EDWARD WELCH

vs.

EBENEZER H. ROGERS.

Mortgage Foreclosure—Deficiency—Levy Upon Tax Certificates.

Certificates given by the county treasurer to purchasers of land for non-payment of taxes are not subject to levy under execution. Muniments of title to lands cannot be attached or levied upon as a levy upon the realty described therein.

On or about the 20th day of November, 1882, a decree for deficiency on mortgage foreclosure was entered in this cause. No appeal was taken from said decree. On February 15th, 1883, a writ of *fi. fa.* was issued in said cause, directed to the Sheriff of Wayne County. Under this writ the Sheriff levied upon the interest of said Rogers in certain lands in said County, and seized as supplementary thereto certain certificates of the sale of said lands for delinquent taxes, and which had become absolute—that is, the year within which the lands might by law be redeemed had expired.

On March 12th, 1883, a petition was filed by said Rogers in said Court, praying that said levy be set aside on the ground that the certificates were not subject to levy.

He also stated in an affidavit that the manner in which the levy was made was irregular; alleging that the sheriff was accompanied by Jay Fuller, the complainant's solicitor, and by Cyrus Johnston, the latter a well known dealer in tax titles. That Johnston, under the direction of the sheriff, "rummaged the

office of petitioner, pulling private papers from pigeon holes in cases, and overhauling many private papers in the office, and scattering them promiscuously around the room. That he remonstrated with the sheriff and Johnston, and asked to be permitted to make a list of the papers thus taken, but no heed was paid to his remonstrance."

The question was ably argued before Judge Chambers by *Jay Fuller* for Complainant, and by *John C. Conely* for Defendant.

The Court, CHAMBERS, J.: Held the levy to be good.*

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*On the hearing in the Supreme Court for a writ of mandamus to compel Judge Chambers to vacate the order sustaining the levy, argued at the January term, 1884, J. W. Romeyn appearing for Rogers, the relator, and Mr. Fuller for respondent, the court granted the writ. No opinion having been filed in that court, we give the case a place in this volume.

We have been unable to obtain the briefs of counsel, they having loaned them where they cannot be had just as we need them; so we do not cite the authorities.

But the point particularly decided, as we recall it (having been present at the hearing of the motion for mandamus at Lansing), was that levying upon muniments of title was not a levy upon realty.

Wayne Circuit.

EDWIN F. CONELY,

Proponent of the last Will of

FIRTH A. McDONALD,

Deceased,

VS.

HENRIETTA McDONALD,

Contestant.

Brief reference to the case.—Extract from the argument of J. Logan Chipman to the jury.

In the year 1866, in the city of Washington, Henrietta McCain, the contestant, was married to the above named Firth A. McDonald. Both were young, with bright promise of future happiness and prosperity. Neither had worldly possessions worth mentioning. Mr. McDonald was at that time in the employ of the late Gov. John J. Bagley, of Detroit, as a commercial traveler for the latter's tobacco house. The young couple took up their residence and lived happily together thereafter in the city of Detroit. Each almost idolized the other. It was not long before Mr. McDonald was taken into the firm of J. J. Bagley & Co. as one of the junior partners. During the few years that he was connected with the firm, he accumulated about $15,000, which, by the will in controversy, was left principally to his brothers and nephews and nieces; his widow, the contestant, being left but $1,000 and a small lot in the remote village of Capac, worth, perhaps, $50.00, in lieu of every possible claim she might have against the estate. This will was made in June,

1875. About a year previous to this, he had made a will by which he gave the greater portion of his property to contestant. In the interval Mr. and Mrs. McDonald made a trip to California, for the benefit of the former's health, he having had for years previous consumptive symptoms. Not getting any benefit from the climate of California, he returned to Detroit shortly before the will in controversy was made, coming by way of the Isthmus to New York city; his wife returning, at his request, by the Pacific Railroad. He could not bear the long ride by rail. His brother, Joel McDonald, of Detroit, met him in the city of New York and came home with him. Mr. and Mrs. McDonald stopped at the Michigan Exchange at Detroit for some little time after this. Then Joel McDonald invited his brother to his house on High street, where he could be more tenderly cared for than in a bustling, noisy hotel. The contestant supposed she was going with him, but she was only allowed to visit him (according to her testimony), in the presence of Joel McDonald, or one of his family, except on one or two occasions. There had never been any personal difficulty between deceased and contestant. Having no children, each devoted an unusual amount of attention to the other; he purchasing for her the most beautiful and costly gifts, and saying repeatedly to John B. Stoutenburgh, a partner in the firm of J. J. Bagley & Co. (now a member of the Detroit Board of Public Works), that "nothing was too good for Ret," (the name he gave contestant). Soon after the will was made the testator went to Germany and died at Badenweiller August 26, 1875.

The will was contested on the grounds of unsoundness of mind and the undue influence of Joel McDonald.

The Probate Court (Judge Wilkinson), after a long contest, admitted the will to probate. On the trial in the Circuit Court of contestant's appeal from the Probate Court, one witness stated in his testimony, among other things, that a certain person interested in sustaining the will, had said to him that Mrs. McDonald's contest would be useless, as she had no money, while the opposite side was well provided with means.

This called from J. Logan Chipman, who made the closing argument on the side of contestant, substantially the following argument. His closing argument in this case was said by his friends to be as good as he had ever delivered in any case.

EXTRACT FROM THE ARGUMENT OF J. LOGAN CHIPMAN.

Money is King, and rules with imperious sway in many places. In the world of commerce, money is the great factor, and overtops all others. Money digs the excavations and enables Toil to enter the temples of trade. Money drew myriads of men from the Celestial Empire across the broad Pacific, and soon the great western plains, mountains, and the Pacific slope, were spanned by the steel rails, and soon the iron horse awakened the echoes of the Rockies and Sierres, and startled the red man in his ancestral hunting grounds.

Money finds the waters of our lakes and rivers, and of old ocean, little disturbed by the prows or keels of the ships that plow their waters, and, waving his magic wand, lo! the great steamers speed across the main, and myriads of sails, white as vestal robes, cheer the

mariner's heart, make glad the traveler on the world's highways and rejoice the commercial world.

Money finds the vast manufactory dumb, and dull, and voiceless; and speaks to it the word of life, and sets flying its machinery, whose products find their way to the shops and homes and farms of our citizens.

Money is King in many places, but when he steps with haughty mien and imperious tread towards the tribunal where LAW holds in equipoise the scales of Justice, knocks for admission, and would fain seize the reins of power, this mighty king becomes as the dust we tread on in the street, and judge and jury trample him (here the speaker stamped his foot upon the floor) with scorn and contempt beneath their feet!

The verdict was for contestant on the ground of unsoundness of mind. Judge Reilly refused to grant a new trial. Proponent took the case to the Supreme Court, where, in a very able and elaborate opinion, the judgment of the Circuit was affirmed. (40 Mich. 150.)

(October, 1877.)

E. F. Conely, *F. A. Baker*, and *Ashley Pond* for Proponent.

Chas. B. Howell, *J. Logan Chipman*, and *Chas. I. Walker* for Contestant.

Wayne Circuit.

BENJAMIN STONE vs. EDWIN JEROME, JR.

Malpractice.

Plaintiff is a hydropathic physician, and attended defendant's wife during her last illness. Dr. Brown

an allopathic physician, and Dr. Walker, a homeopathic physician, had previously attended her without benefitting her.

Plaintiff sues for the value of his services. Defendant sets up in defence malpractice.

The Court, WALKER, J.: Held that in general a physician's undertaking, like that of a lawyer, is that he will exercise ordinary skill. (27 N. H. 471.) If one knowingly employs one who is not a regular physician, the latter is only required to exercise his best skill. (27 N. H. 460, 472; Elwell on Malpractice, 22, 29.) Plaintiff has proved that he practiced according to the hydropathic school. Witnesses for defendant belong to other schools, and testify that plaintiff's practice was bad. But is one school to pass judgment on another?

Judgment for plaintiff for $112.19.

(A. D., 1868.)

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JOHN BOCKHEIM, *Plaintiff in Certiorari*, vs. ALEXANDER R. LINN ET AL., *Defendants in Certiorari.*

Amendment.

In the Court below the summons was against Bockheim and Co. The constable's return shows service on the "defendant." The plaintiff declared against "defendant." During the trial plaintiff's attorney moved to amend by inserting the name of John Bockheim alone. This was allowed and defendant excepted.

The Court, WALKER, J., affirmed the judgment, holding that while in the case of joint defendants, such an amendment would not be allowable, yet it appearing that Bockheim was not served in the firm name, but

individually, and he so pleaded to the declaration, the amendment was properly allowed to be made.

(A. D., 1868.)

———o———

JOHN SEELEY vs. SAMUEL SAVERCOOL.

Dormant Partner.

One Hiram S. Lapham put about $450 into plaintiff's business, shared in the profits, and in a portion of the losses, but the business was done solely in plaintiff's name, and defendant supposed he was the sole proprietor. Lapham acted as clerk in plaintiff's store, and did not assume to be proprietor.

On exception to the report of the Referee, who found for plaintiff, (Parsons on Part., 41 A. 54, 83.) (Story on Part. Sec. 80.) (30 N. Y. 374.) (34 N. Y. 181.)

The Court, WALKER, J.: Held, that Lapham was a dormant partner and that the suit was properly brought in the sole name of plaintiff.

Report of Referee confirmed.

(A. D., 1868.)

Patchin & Brown for Plaintiff.

D. B. and *H. M. Duffield* for Defendant.

———o———

BRADLEY H. THOMPSON vs. EDWARD SHAW.

Trover—Sunday Hiring—Necessity.

Plaintiff kept a livery stable in Detroit. Defendant hired a horse of plaintiff on Sunday. Plaintiff testified that defendant said that he was going to a funeral. Defendant testified that he hired the horse till 6 p.m.,

and that the funeral was but incidentally involved in the transaction.

Defendant took a ride up to Grosse Pointe. On his return, while the lady with him was driving, the horse stepped through a defective bridgeway, and received injuries which caused its death.

The Court, WALKER, J., charged the jury, saying (among other things) that if defendant hired the horse to take him to a funeral, and went elsewhere, it was a conversion, and plaintiff is entitled to a verdict for the value of the horse. Attending a funeral on Sunday is in harmony with the statute allowing works of necessity and mercy to be done on Sunday.

(A. D., 1868.)

U. S. District Court.—Eastern District Michigan.

EX PARTE LANE.

Habeas Corpus—Amendment—Information and Belief—Judicial Cognizance—Crime "against the Statute."

Oliver Lane was charged with forgery alleged to have been committed at Rondeau, in the Province of Ontario.

Alexander B. Baxter, of Chatham, Ontario, made complaint on information and belief, before D. J. Davidson, U. S. Extradition Commissioner, at Detroit. Lane was arrested and brought before him and he committed him to the custody of the U. S. Marshal to await the order of the Secretary of State.

Lane sought by a writ of *habeas corpus* and *certiorari* to review the proceedings before the Commissioner.

The Court, BROWN, J.: Held,—1. The interlineation of the word "extradition" by the Commissioner after

the proceedings were closed before him, was an unauthorized amendment, as the general powers of a Commissioner do not embrace the duties of extradition Commissioner, (Rev. Stat. U. S., sec. 5270). The complaint and warrant should show on their face that the Commissioner issuing the same is empowered to act in cases of that description

Re Farez, 7 Blatchford, 34.
In re McDonnell, 11 Blatch., 86.
U. S. vs. Stowell,2 Curtis, 153.

2. The complaint did not charge that the alleged crime was committed within a province within the territorial dominion of Great Britain. But the Court will take judicial cognizance of this fact.

Peyroux vs Howard, 7. Pet. 324, 342.
The Appollon, 9 Wheat, 374.

3. The charge is that the offence is "against the statute in such case made and provided." There was no proof before the Commissioner of any statute in Ontario punishing the crime of forgery. But as forgery is a common law offense, the charge that it is "against the statute" may be treated as surplusage.

1 Bishop on Criminal Proceedings, sec. 349.

4. The complaint is made upon information and belief. In this it is fatally defective. The statute requires a complaint upon oath, which is not complied with when one swears to the best of his "knowledge, information and belief."

Ex parte Smith, 3 McLean, 135.
Washburn vs. People, 10 Mich., 372.
Smith vs. Luce, 10 Wend., 257.
Matter vs. Bliss, 7 Hill, 187.
Proctor vs. Prout, 17 Mich., 473.

It is so in obtaining an injunction.

Waddell vs. Bruen, 4 Ed. Ch. 672.
Armstrong vs. Sanford, 4 Minn., 49.

But if one so complaining gives the sources of his information (which is not the case at bar) this might in some cases suffice.

In re Farez, 7 Blatch., 345.

The prisoner is entitled to his discharge.*

(January, 1881.)

A. E. Hawes for Petitioner.

J. W. Finney, Asst. U. S. District Attorney, for the Prosecution.

Recorder's Court, Detroit.

Matter of Opening Willis Avenue.

The opening of a street from Woodward Avenue to the west line of the Brush farm, or to Recreation Park, is not a public necessity, the proposed highway being a mere *cul-de-sac.*

In the matter of the extension of Willis avenue from the east line of Woodward avenue to the west line of part of the Brush farm now leased to the Recreation Park Association, the resolution of the Common Council claimed that public necessity required that a steet be laid out from Woodward avenue easterly through two five-acre lots fronting Woodward avenue to the said line of the Brush farm.

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*Judge Brown's opinion in full may be found in 6 Fed. Rep., 34. We intended to publish this with notes citing many authorities relating to questions of extradition, but, as with many other cases, the argument in the Lyons case occupies so much more space than we supposed it would that other matters that follow are necessarily abbreviated.

O. W. Hewett, and *Baldwin, Draper* and *Jacokes* for Plaintiff in Certiorari.

E. R. Webster and *T. J. Davis*, Contra.

Superior Court of Grand Rapids—In Chancery.

FREDERICK VOLKHART vs. ALICE VOLKHART.

Divorce—Residence of Parties—Information and Belief.

Where the Court's jurisdiction depends upon the residence of parties, a decree granted when the bill is silent as to residence, and defendant fails to appear, is not void, when it appears by defendant's petition to vacate the decree, that the residence in fact was such as the law required.

An affidavit on information and belief, (as to the non-residence of a defendant), which contains references to the *sources* of information, is sufficient.

In this cause the bill was filed January 25, 1881. Decree of divorce was granted September 14, 1881, on *pro confesso*, after publication of order for defendant's appearance, which order was made on the basis of an affidavit in which defendant's non-residence was alleged on affiant's information and belief, but he named in his affidavit the sources of his information.

On March 13, 1882, complainant married.

Defendant petitioned the Court to vacate and set aside the decree on the following grounds:

1st. The bill does not state the residence of either of the parties to be in the city of Grand Rapids.

2d. That the affidavit for publication was on information and belief. The affidavit stated the sources of information.

The Court, PARRISH J.: Held that the decree was not void on account of the omission in the bill to state the residence, the petitioner having shown in her petition that she was at the time the bill was filed, and had been ever since, a resident of Grand Rapids.

McCormick vs. Sullivant, 10 Wheat., 192.
Kennedy vs. The Bank of Georgia, 8 How., 611, 612.*

An affidavit for publication, in cases of absent and concealed defendants, on information and belief, giving the *source* of information, is sufficient.

Pettiford vs. Zoellner, 45 Mich., 358.

It appeared that the defendant knew of the decree soon after it was rendered, and knew of the marriage of complainant. Yet she delayed the application to be heard in the case until more than six months after the marriage of the complainant, and more than a year after decree.

Application denied.

C. C. Howell for Petitioner.

Turner and *Carroll* for Complainant.

Superior Court of Detroit.

ANDREW ROSS vs. JEREMIAH CONNOR.

Alias Execution—Levy on Real Estate.

Plaintiff obtained a judgment against defendant, and, under an execution issued, the sheriff levied upon four lots situate in the city of Detroit, as the property

*"The proceedings are not void for want of an allegation of citizenship of the stockholders of the Bank. They were erroneous, but the amendment in this regard before final decree cured the error."—8 How., 612.

of defendant, sold the same, plaintiff being the purchaser, and returned the *fi. fa.* wholly satisfied.

Defendant was aware of what was done, and in writing requested and obtained an adjournment of the sheriff's sale as advertised.

But after the sale defendant claimed that one lot sold was the homestead of defendant and his family.

Plaintiff quit claimed said lot to defendant, reserving in the deed all right to collect the balance thus left unpaid in the judgment, and then applied to the Court and obtained an alias *fi. fa.* for the amount bid at the sheriff's sale for the lot so quit claimed. It appeared that neither plaintiff's attorney nor the sheriff were at fault in the levy on the homestead.

Defendant moved to vacate the order granting the alias *fi. fa.* on several grounds. His counsel cited the following authorities:

1. Because the principle of *caveat emptor* applies to such sales.

Hermann on Executions, Sec. 214, and cases cited.
Moore vs. Aiken, 2 Hill (S. C.) 102.
Weidler vs. Farmer's Bank of Lancaster, 11 S. & R., 134.
Vattier vs. Lytte's Ex'es, 6 Ohio, 478.
Baird vs. Rice, 1 Coll., 23,

2. Such alias writ cannot be granted on motion.

Parker vs. Judge, Calhoun Circuit, 24 Mich., 408.
Jennison vs. Haire, 29 Mich., 216.
Brown vs. Thompson, Do., 75.

3. The purchaser of property at an execution sale is chargeable with notice of its value and situation, and of the legal rules bearing upon the situation.

Morris, et al. vs. Robey, 73 Ill., 462.

4. An alias execution cannot issue until the first is vacated upon the records.

Hermann on Ex., 242. 5 Ala., 89.

5. The correct procedure to vacate return of first execution as a basis for issuing an alias is by *scire facias* or by bill in equity.

Hughes vs. Streeter, 24 Ill., 648.

As defendant prevailed in the motion, we do not give the authorities cited by plaintiff's counsel on the argument.

The Court, CHIPMAN, J.: Granted the motion, but did not state the specific ground on which the decision was based.

(January, 1882.)

Chas. B. Howell for Plaintiff.

Ovid N. Case for Defendant.

Wayne Circuit.

EX PARTE ABRAHAM GEORGE.

Capias ad res—Habeas corpus—Courts Interfering with Tribunals of concurrent Jurisdiction.

One court should not entertain questions arising in another court of equal and concurrent jurisdiction.

George petitioned the Wayne Circuit for release on writ of *habeas corpus*. He had been arrested on a writ of *capias ad res.*, issued in and of the Superior Court, the Judge of that court—COCHRANE—having endorsed on said writ an order to hold defendant George to bail.

C L. 1871, secs. 5736 and 5737.

Afterwards Judge COCHRANE over-ruled a motion to admit George to common bail.

By the Court, PATCHIN, J.: Petitioner's claim for release is based on an alleged insufficiency in the affidavit for the writ of *capias* in the Superior Court.

That court having passed on the same question now raised, I am clear that this court should not interfere.

(April, 1874.)

Wayne Circuit—In Chancery.

CLARK W. SHIPPEY vs. MICHAEL SULLIVAN AND ELLEN SULLIVAN.

Fraudulent conveyance—Husband and Wife as Witnesses—Proper Parties.

Complainant obtained judgment against defendant Michael Sullivan for a sum due on a building contract. Between the time the bill sued on accrued and the date of the judgment, Michael Sullivan made, executed and delivered to Ellen Sullivan, his wife, a deed of the property named in the building contract. After the delivery of the deed Michael Sullivan give a mortgage on such property for borrowed money in his own name, his wife joining in the mortgage.

The deed was filed for record before the judgment above referred to was rendered and before the levy thereon.

The bill in this case was filed to have the deed decreed to be subject to complainant's levy, on the grounnd that the deed was given without consideration and in fraud of creditors.

Defendants demurred to the bill on the following grounds:

1. Because Michael Sullivan is not a proper party, having no personal interest in the property conveyed.

2. Because the defendants are husband and wife, and the answer of defendants would be in contravention of section 5969 of the compiled laws of 1871, (How. Stat., 7546), which provides:

"A husband shall not be examined as a witness for or against his wife without her consent, nor the wife against the husband without his consent, etc."

Complainant's counsel claimed that the joinder of the defendants did not make them, or either of them, *witnesses*, and that they, in making answer, were not *examined*.

The bill called for an answer not under oath.

The following authorities were cited by complainant's counsel on the argument of the demurrer:

Story's Eq. Pl., sec. 216, a.
Gaylord vs. Kelshaw, 1 Wall., 81.
Sewell vs. Russel, 2 Paige, 175.
Ward et al. vs. Hollins et al., 14 Md., 158.
Lawrence vs. Bank, 35 N. Y., 320.
Beardslee vs. Foster, 36 N. Y., 561.
King vs. Martin, 2 Ves., Jr., 641.

Defendant's counsel cited, among others, the following authorities:

Taylor vs. Webb, 54 Miss., 36.
Leach vs. Shilby, 58 Miss., 681.
Story's Eq. Pl., sec. 231 et seq.

The Court, CHAMBERS, J.: Overruled the demurrer. (May, 1884.)

Corliss & Andrus for Complainants.

Conely, Maybury & Lucking for Defendants.

Kalamazoo Circuit—In Chancery.

STEPHEN W. DUNCOMB, Adm'r, vs. JAMES S. RICHARDS et al.*

Injunction—Prayer for Injunction in Bill.

There was a prayer for injunction in the bill, but none in the prayer for process.

The injunction having been allowed, a motion was made to dissolve it on the ground that no prayer for an injunction was contained in the prayer for process.

The Court, HAWES, J.: Held that while this was a good ground for refusing an injunction, it was not for a dissolution thereof.

Taylor et al. vs. Snyder et. al., Walker's Chan., 490.

B. F. Heckert, *Spafford Tryon* and *Joslyn & Freeman* for Complainants.

F. J. Atwell and *H. F. Severans* for Defendant.

Superior Court of Detroit.

OMAHA WHITE LEAD COMPANY vs. JAMES H. WORCESTER.

Alias fi. fa.—Levy on Personal Property.

Execution being issued under a judgment in attachment proceedings against defendant, the sheriff levied

*This is a highly interesting case. Complainant finally obtained a decree in the cause, which was brought to set aside certain assignments made by an uncle in his dotage to his nephew. Hon. C. I. Walker succeeded Mr. Severans as Counsel for Defendant in the Supreme Court. (46 Mich., 166.)

upon and sold thereunder a large amount of personal property and returned the *fi. fa.* wholly satisfied.

Subsequently George W. Radford, defendant's general assignee, obtained in the Superior Court a judgment in an action of trover against Walter H. Coots, the sheriff, for the value of the property so levied upon and sold. The Supreme Court affirmed this judgment. (Coots vs. Radford, 47 Mich. 37.)

Plaintiff afterwards moved, in the Superior Court, for an order setting aside the return of the former execution and for an alias execution under section 6118 C. L. '71 (sec. 7703 How. Stat.) for the full amount of the judgment and costs.

Defendant claimed that the new execution could only issue for the amount of the judgment and the usual costs on default; that costs of attachment, storage and sale could not be recovered.

The Court, CHIPMAN, J., Ordered, that the return to the first execution be set aside, and that an alias execution issue for the amount of the judgment and costs, save those of attachment and sale.

(December, 1881.)*

Griffin and *Dickenson* for Plaintiff.

George W. Radford for Defendant.

*Lest the decision in the case of Ross vs. Connor, *ante*, may be thought to conflict with this, made by the same Judge, we may say that (aside from other differences between the two cases) we understood the Court to state, in connection with the case of Ross vs. Connor, that sec. 7703 How. Stat. does not apply to cases where the sheriff levies on real estate.

BRIEF BIOGRAPHIES

—OF—

MICHIGAN JUDGES,

PAST AND PRESENT.

PART II.

Commandants as Judges.†

A judiciary of some sort is necessary on the frontier and in a sparsely settled country. When the territory comprising the present State of Michigan was under French rule the Commandant was the principal judicial as well as military and civic officer. At Detroit Cadillac was the first Commandant. His powers were very extensive, yet appeals lay to the Governor General at Quebec and to the Colonial Minister in France

Tonty evidently thought that Cadillac possessed plenary powers, for in 1720, he complained that Cadillac was "judge and party in all commercial transactions." They evidently did not in those days draw such nice distinctions between parties and judges as governments do in our time The Commandants were called to witness all business transactions, and at weddings they would as soon have left out the bride as the Commandant.

In the main the rule of the Commandant was mild and judicious.

Under the English rule there were Commandants. De Pyster performed marriage ceremonies, and also baptized all who desired it in accordance with the rules of the English Church.

† The most valuable sources of information to us in writing this portion of the work are the advance sheets of Silas Farmer's History of Detroit and Michigan, an invaluable work to which many future historians will often turn. The facts therein found are not only well nigh numberless, but have been so carefully gathered and tested as to be unusually accurate.

In 1777 Gov. Henry Hamilton was also appointed judge at Detroit, his jurisdiction being similar to that of justices of the peace in our day. A Mr. Owen was afterwards appointed judge at Detroit, but died soon afterwards. In 1777 Gov. Hamilton appointed Philip Dejean justice, who carried his functions with a high hand, trying and ordering the execution of men accused of crime.

Court of Trustees.

During 1779 and 1780, this Court exercised jurisdiction in civil matters where the amount involved did not exceed ten pounds.

District Courts.

These were the first tribunals established in Michigan whose proceedings assumed a form of regularity.

Hesse was the name of the District which embraced Michigan. William Dunmore Powell was the first judge.

Common Pleas.

What community has not had a Court of Common Pleas? In December, 1788, a session of this court was held at Detroit. Louis Beaufait was senior justice, and James May, Charles Girardin, Patrick McNiff and Nathaniel Williams were associate justices.

United States Courts.

The first Federal Court held in Michigan convened July 1st, 1836.

The Circuit Judges have been the following: 1836–1862, John McLean; 1862–1870, Noah H. Swayne; 1870–1878, Halmer H. Emmons; 1878, John Baxter.

The District Judges have been the following: 1836–1870, Ross Wilkins; 1870–1875, John W. Longyear; 1875, Henry B. Brown.

The ordinance of 1787 provided for Courts. Judges were required to be owners of 500 acres of land. They held office during good behavior. The Governor and Judges constituted the territorial legislature. It is said that occasionally, when the Court found a defect in the laws which prevented the even flow of justice from the august tribunal, the Court took a recess, during which the legislature enacted the necessary amendment to the law.

Territorial Courts.

The first session of the Territorial Court was held August 30, 1788.

The following are the names of the Judges of the Northwestern Territory, under the ordinance of 1787, down to 1796:

October 17, 1787: S.H. Parsons and J Armstrong. (The latter declined.)

February 19, 1798: J. M. Varnum, John Cleve Symms, *vice* Armstrong, declined.

August 30, 1789: Wm. Barton, *vice* Varnum, term expired.

September 12, 1789: George Turner, *vice* Barton, declined.

March 31, 1791: Rufus Putnam, *vice* Parsons, deceased.

February 12, 1798: Return J. Meigs, *vice* Turner, resigned.

December 22, 1796: Joseph Gilman, *vice* Putnam, appointed Surveyor General.

During the period that Michigan was included in Indiana Territory, the following were the Judges: William Clarke, Henry Vanderburgh and John Griffin.

On October 24, 1804, a session was held at Detroit, Judge Vanderburgh presiding.

In the introductory portion of the fourth Michigan Reports (3rd Gibbs) is a sketch of the Territorial Supreme Judges, by Judge B. F. H. Witherell, who was personally acquainted with all of them except Judge Bates. In the same connection there is a sketch of the other Supreme Judges down to 1857, when the present system was introduced.

We present these sketches here as worthy of reproduction, and as being much better than anything we can write on the subject.

TERRITORIAL JUDGES.

By an act of congress, passed on the 11th of January, A. D. 1805, the territory of Indiana was divided, and Michigan was organized as a separate territorial government.

On the 2d of March in that year, Augustus Brevoort Woodward was appointed by the president of the United States judge for the territory of Michigan, and on the 3d of March, Frederick Bates was also appointed judge. These two judges, with the governor (General Hull), set the territorial government in motion. On the 29th of March, 1806, John Griffin was appointed by the president the third judge. These three constituted the Supreme Court of the territory. "The governor and judges, or a *majority* of them," possessed the legislative power of the territory. They were also a board of commissioners on the part of the United States, to lay out a new town of Detroit; and, after giving a lot to each of the

inhabitants of the old town (under certain restrictions), they were to sell the surplus lots and ten thousand acres adjacent, and from the proceeds build a court house and jail (the old town of Detroit having been wholly destroyed by fire on the 11th of June, 1805, not a dwelling being left standing). The duty was found to be very onerous upon the judges, and now, after the lapse of more than a half century, it is not yet fully completed, but the duty is transferred to the common council of the city of Detroit. The tenure of office of the judges was "during good behavior," and by that tenure they held till the year 1824.

JAMES WITHERELL was appointed a judge of the territory by President Jefferson, on the 23d of April, 1808, in the place of Judge Bates, who had resigned on being appointed a United States judge for the territory of Louisiana.

The government of Michigan, like most of our early territorial governments, was anomalous; the legislative and judicial powers were placed in the same hands. "The governor and judges, or a *majority* of them," were the words of the ordinance of 1787, conferring legislative power. The power to legislate was nominally restrained to "adopting" laws from the "original states"—the words "original states" were construed to mean such states as had been admitted into the union when Michigan was organized as a territory, and the word "adopt" was construed to mean not the *letter*, but the *principle* of the law adopted, and such laws and parts of laws were adopted as were found to be "necessary and suitable to the circumstances of the territory of Michigan." This construction of the ordinance enabled the "governor and judges" to legislate generally; in fact, to *make* the laws. The laws were comparatively few in number, easily understood, and gave general satisfaction. If any law was found to work badly, the governor, or one of the judges, notified the others, the "legislature" assembled, and the law was repealed or amended. On one occasion, I recollect, two Indians were arrested on a charge of murder, in Wisconsin (Wisconsin was then a part of Michigan), and brought to Detroit for trial. When the Supreme Court assembled, it was found that the law relative to grand jurors was defective. The court adjourned, the "legislature assembled," the law was amended, and the prisoners were tried, convicted, and executed. In addition to the ordinary judicial duties as a territorial court, an act of congress was passed, imposing upon the judges the jurisdiction of a circuit and district court of the United States. When sitting as such, their proceedings were entirely separate and distinct from the territorial court. All such civil cases as are now tried in the United States circuit and district court

and all prosecutions for crimes committed in the Indian country were tried in the "circuit and district court." All processes, in *all* our courts, ran: "In the name of the United States of America," as the sovereign power, and all indictments concluded: "against their peace and dignity." All capital trials were had at the bar of the Supreme Court. All appointments of territorial, county, and township officers were made by the governor alone—the people literally had no voice whatever in the government. This was not very satisfactory to the emigrants from the eastern states, who began to arrive about the year 1820. The matter was agitated with other causes of dissatisfaction, and congress was induced to sever the judicial and legislative power, and to limit the tenure of the office of United States judges to four years, and to provide for an election, by the people, of a legislative council. Under this act the first council met in 1824. Judge Woodward failed to be re-appointed, and Judge Griffin declined a re-appointment, and on the 21st of January, in that year, the president appointed Judge Witherell presiding judge of the Supreme Court for four years, and on the 21st of April following, Solomon Sibley and John Hunt were appointed judges. Judge Hunt died in 1827, and Henry Chipman was appointed in his place. In 1828 their term of office expired, when William Woodbridge was appointed presiding judge in the place of Judge Witherell, with whom, by the consent of President Adams, an exchange of office took place, Judge Witherell being appointed secretary of the territory. Judge Sibley and Judge Chipman were re-appointed for four years. In 1832, Judge Sibley was re-appointed and George Morell and Ross Wilkins were appointed to succeed Judges Woodbridge and Chipman. In 1836, on the 1st of February, the three were re-appointed by the president judges of the territory; but the territory being admitted into the union as a state, early in 1837, the appointment became vacant.

The salaries of the judges were small, considering the large amount of labor they were required to perform.

They were but $1,200 per annum till the year 1834, when they were increased to $1,500. The tenure of office "during good behavior," probably induced the early judges of the territory to accept appointments in this, then distant, isolated, and sparsely settled peninsula, containing at that time some three thousand civilized inhabitants. These were all of the judges appointed by the United States, for Michigan, during its existence as a territory for thirty-one years.

Judge WOODWARD was a native of the state of Virginia. In early life he was fond of literary pursuits; he wrote and published several works;

one of them, I think, was entitled "Electron, or the Substance of the Sun." It, however, cast but little "light on the subject," and has long been out of print. The judge was also the author of that singular production, the charter of the "Catholepistomiad, or University of Michigania." It was passed into a law in 1817. It provided for thirteen didaxii or professorships—one of "Anthropoglosica," one of "Polemitactica," and eleven others of the like character The judge was a well-read lawyer, and had practiced law in the District of Columbia, where he resided at the time of his appointment as judge. He was a man of considerable talent, but his excessive eccentricities, on the bench and elsewhere, detracted very much from his practical usefulness. It was one of the principal causes of the change in the tenure of the office of the judges. Judge Woodward was president of the "Bank of Detroit," which was chartered about 1806, and existed some three or four years. He was also a colonel in the militia of the territory. After the surrender of the country to the British forces, in 1812, Judge Woodward remained at Detroit, and rendered essential service to our people by interfering, in their behalf, with Governor Proctor, who declared and enforced martial law. After his failure to be re-appointed a judge for Michigan, in 1824, he was, on the 26th of the following August, appointed a United States judge for the territory of Florida, and died about two years thereafter. He lived and died a bachelor.

Judge BATES resigned his office about 1807, on his appointment as territorial judge in Louisiana, and as he was, as before mentioned, on the bench of the Supreme Court but some two or three years, little is recollected of him. He is, however, well spoken of by those who knew him. Not many years since he was living, at an advanced age, at St. Louis.

Judge GRIFFIN was a native of Virginia. He was *said* to have read law in early life, but seemed to pay little attention to it in after years. Previous to his appointment as judge he had traveled in foreign countries. He was in Paris during one of its early revolutions. Judge Griffin was constitutionally *inert*, wanted firmness and decision of character, and disliked responsibility; but was considered an upright judge, and an honest man. On the expiration of his term of office, in 1824, he returned to Philadelphia, and married in that city. He died some twelve or fifteen years since. At the time of his decease he was next in descent to a Scotch peerage.

Judge WITHERELL was a native of Mansfield, in Massachusetts. His ancestors emigrated from England soon after the first arrival in the Mayflower. In 1775, at the age of 16 years, he volunteered, with his towns-

men, to aid in the siege of Boston, and never left the army till it was disbanded in 1783, at which time he held a commission in the Massachusetts line. He carried with him, through a long life, the military habits of his youthful training—promptness, decision, and firmness of character. At the end of the revolutionary war he studied the profession of medicine, and removed to Rutland county, Vermont, about the year 1787, where, for several years, he practiced his profession; but afterwards turned his attention to the law, and was, for several years, on the bench, and in the legislature of that state. He was appointed a United States judge of Michigan by Mr. Jefferson, while in congress from Vermont, in 1808. Though not originally a lawyer by profession, by diligent application he acquired a knowledge of legal principles, and administered justice, but little trammeled with legal technicalities. It was said of him, by one of the most eminent statesmen of the age, that he possessed "as pure a heart, and as sound an intellect, as is ordinarily given to human nature." His sterling integrity, moral worth, and prompt attention to his official duties, made him an acceptable judge. When the war of 1812 broke out, being the only revolutionary officer in the territory, at the request of the executive, he took command of the "Legion," as its colonel. The corps did good service, and several of the men fell in battle during the war. On the signing of the capitulation by General Hull, he refused to surrender his corps to the enemy, but ordered them to disband and go home. He was, however, himself made a prisoner of war, and carried away with the army, and afterwards paroled, and on being exchanged, in 1814, immediately returned to his judicial duties. There were no terms of the court held while the enemy were in possession of the country. Judge Witherell died on the 9th of January, A.D., 1838, in the seventy-ninth year of his age. Both houses of the legislature, being then in session, passed resolutions of respect for his memory, as did also the bar of the Supreme Court.

Judge SIBLEY was a native of Massachusetts. He studied law in Rhode Island, and removed to Marietta in Ohio, about the year 1795, and entered on the practice of his profession. He occasionally came to Detroit, with the late Judge Burnett, of Cincinnati, to attend our courts, then held by Judge B. They came through the woods, several hundred miles, on horseback. Judge Sibley removed to Detroit about 1798, and continued in practice till his appointment as judge. He represented this part of the Northwest territory in its legislature, and afterwards, the territory of Michigan as its delegate in congress. He was a sound lawyer a man of firmness and integrity, and of strong common sense. He died in 1845.

Judge HUNT was also a native of Massachusetts. He studied and practiced law in that state for some years, and removed to Detroit about the year 1819. He devoted himself, with untiring industry, to the duties of his profession. There were then, comparatively, few lawyers in the territory, but there were several men of ability at the bar, and Judge Hunt was among the most prominent. He acquired an extensive and lucrative practice. He was kind and courteous on the bench, and attentive to his duties. He died before the expiration of his term, in 1827.

Judge MORELL was a native of Lenox, in Berkshire county, Massachusetts, and was born March 22d, 1786. He graduated at Williams College in 1807, and studied law in the office of John Russel, Esq., at Troy, New York. Among his fellow students were the Hon. R. H. Walworth, late chancellor of that state, and the Hon. Wm. L. Marcy, late secretary of state. He was admitted to the bar in 1810. After being admitted to practice, Judge Morell settled at Cooperstown, Otsego county, New York, where he soon became distinguished in the profession. He was twice appointed the first judge of the county of Otsego. The last appointment he resigned, on being appointed a United States judge for the territory of Michigan. He was re-appointed by the president on the 1st of July, 1836, a judge of the territory, and was appointed a judge of the Supreme Court of the state of Michigan, and judge of the circuit court, July 18, 1836, and held both offices till the state was admitted into the Union in 1837. He was appointed chief justice of the state on the 1st of April, 1842, and died at Detroit, March 9th, 1845. Both branches of the legislature, then in session, passed resolutions of respect for his memory, and resolved to attend his funeral in a body; the bar also passed similar resolutions. The learning and attainments of Judge Morrell were of a very high order. On the bench he was conspicuous for his profound legal knowledge and untiring industry. He comprehended at a glance all questions presented him, and rapidly applied the rule of law to them. In questions of practice he had no superior; *no* judge ever occupied the bench with more dignity of manner, or a more anxious desire to discharge his duty, than did Judge Morell. The suavity of his manners, and the kindness of his heart, rendered him a general favorite of the bar, who best knew his worth. In social life he graced the circle in which he moved, and was always a welcome guest. He was of Huguenot descent, his ancestors having fled from France on the revocation of the edict of Nantes.

Three of the judges of the old territorial Supreme Court are yet living.

The Hon. WILLIAM WOODBRIDGE is a native of Connecticut, where he studied law, and went to Ohio in early life, where he practiced for several years, and was appointed secretary of the territory in 1814, when he removed to Detroit, and practiced in the courts of the territory for many years. He served in the legislature of Ohio before his removal to Michigan. In 1819 he represented Michigan as her first delegate in congress; in 1828 he was appointed presiding judge of the territorial Supreme Court, as before mentioned; in 1838 he was elected to the senate of the state; and in 1839 was elected governor of the state of Michigan, and in 1840 one of our senators in congress.

The Hon. HENRY CHIPMAN is a native of Vermont, where he studied his profession, and subsequently practiced law for many years in South Carolina. He removed to Michigan in 1824, and was, as before mentioned, twice appointed a judge of the territory, and held, at different time, several other offices in the territory, and was the presiding judge of the late district court.

The Hon. ROSS WILKINS is a native of Pennsylvania. He came to Michigan on his appointment as judge of the territorial Supreme Court, in 1832. After the admission of the state into the Union, he was appointed United States district judge for the district of Michigan, which he yet holds.

Of these three it is unnecessary to speak. They carried with them to the bench a high order of talent and learning, and on the bench gave general satisfaction to the country.

B. F. H. WITHERELL.

DETROIT, October 1, 1857.

STATE JUDGES.

Since the organization of the Supreme Court of Michigan, five of its judges have died. The decease of Judge Morell has been noticed in the preceding article.

WILLIAM A. FLETCHER was the first chief justice. He was a native of New Hampshire, and in his younger days was engaged in mercantile business in Salem, Massachusetts. This was about the year 1813. Afterwards he removed to the county of Schoharie, in the state of New York, where he studied law, and in 1821 removed to Detroit, and entered upon the practice of his profession. He 1823 he accepted the appointment of chief justice of the county court of Wayne county, which he held for

some three years, and then returned to the bar. On the 17th of April, 1833, the legislative council of Michigan established a judicial circuit, embracing all the organized counties of the state, except Wayne. The court thus organized was to consist of a circuit judge, who was to reside within the limits of the circuit, after his appointment, and two associates for each county. The circuit judge was to hold his office for the term of three years. The court possessed both chancery and common law jurisdiction of all civil actions at common law, and of all offences and crimes not cognizable by justices of the peace, and possessed appellate jurisdiction in civil and criminal actions from the judgment or sentence of justices of the peace. The counties included in this circuit were all those of the southern tier, all in the central tier (except Van Buren, not then organized, and Wayne, excluded by the act), and the counties of Oakland, St. Clair and Macomb. In each county, terms were to be held twice a year. Judge Fletcher was appointed circuit judge of the court thus created, and in compliance with the provision in the act, requiring the judge after his appointment to reside with the circuit, removed to Ann Arbor, and continued to reside there until his death. His judicial labors, while in this position, covered a very extensive territory, and must have severely taxed his energies. Upon the organization of the state government, he was appointed chief justice of the Supreme Court, which position he retained until his resignation in 1842. Judge Fletcher possessed a clear, discriminating mind, and dispatched the business of his circuit, and the duties devolving upon him as judge of the Supreme Court, with great fidelity, and to the satisfaction of the public. In 1837 he was appointed to revise the laws of the state, which duty he performed in the course of the year. It was a task of great labor, and should not have been undertaken by one person alone, especially one who had already assumed other official duties. The work, though evincing much industry and ability on the part of the revisor, was little satisfactory to himself or the public. His death took place at Ann Arbor, in the month of August, 1858.

Hon. George Miles was a native of Amsterdam, Montgomery county, New York, where he was born April 5th, 1789. He was a descendant of one of the old Puritan families of New England. In early life he had to rely on his own resources, and to fight the battle of life unaided, which he did manfully, and this early training gave to his character an energy and self-reliance which it sustained throughout. He was admitted to practice in 1822, in his native state. Before his removal to this state he held the office of district attorney for Alleghany county. He performed

its duties with great diligence and ability. In May, 1837, he removed to Ann Arbor, where he continued in the practice of his profession until his appointment to the bench upon the resignation of Hon. Daniel Goodwin, in 1846. The reported opinions of Judge Miles, to be found in preceding volumes of these reports, are noticeable for their ability, conciseness and close adherence to the points involved, bearing, in these particulars, a great resemblance to the decisions in the earlier New York reports. He was a man of commanding personal appearance. He presided on the bench with great dignity. He possessed an exalted character for integrity, and was respected and esteemed by all who knew him. His death occurred while he was in the prime of manhood. By it a career of useful service to the state—one which would have finally earned for him a high position among the eminent judges of the country—was suddenly arrested.

Hon. EDWARD MUNDY was born in Middlesex county, New Jersey, April 14, 1794. In 1809 he entered Queen's college (now Rutger's), and graduated in 1812. He finished his professional studies, and settled down to the practice of law in his native county. Having previously visited some portions of what is now called central New York, then comparatively a new country, he imbibed a strong desire for western life. In 1819, leaving kindred and friends, he emigrated with his family to Illinois, then in the almost unknown and unexplored west. After passing through many trials and hardships, he finnally gained a successful and remunerative practice. In the midst of this success, his dwelling was accidentally burned to the ground. Other misfortunes soon followed, which induced him to return to his native state. Here he embarked in mercantile business, and continued until 1831. But who ever mingled for a while in the stirring scenes of western life, and was content to return and keep pace with the slow march of progress in the older states? Accordingly we find that in the year last named he determined to try his fortune again in the west. He removed to Ann Arbor, and up to 1835 held the offices of justice of the peace and associate judge, for Washtenaw county. He was then elected to the convention that framed the first constitution of Michigan, and was an active influential member of that body. He was elected lieutenant governor of the state, at the first and second state elections. At the close of his second term of office, he now, at the age of 47, after an interval of thirteen years, devoted to other pursuits and to political life, resumed the long neglected practice of his profession. He attended to his duties with such energy and assiduity, that he soon acquired an extensive practice. He was not long in attain-

ing a high position at the bar. He was appointed successively prosecuting attorney of his county, regent of the University, and afterwards attorney-general of the state. In 1848 he was appointed by the governor and senate judge of the Supreme Court, and presiding judge of the sixth judicial circuit; upon which he removed to Grand Rapids, within his circuit. He held the office of judge until his death, which occurred at his place of residence on the 13th day of March, 1851. Judge Mundy was a man of fine personal appearance. He presided over the senate with great dignity. He was gentlemanly and courteous in his intercourse with his fellow men. Whatever station, public or private, he occupied, he was never content with anything short of the complete discharge of its appropriate duties. He had a thorough knowledge of the rules governing deliberative bodies. This, with a quick perception, a ready tact, and dignified manner, made him the model of a presiding officer. His performance of his judicial duties was in the highest degree satisfactory to the profession. His published opinions give evidence of much learning and investigation. In the relations of private life, he possessed many excellencies of character. As a neighbor he was kind and charitable; constant in his friendships. Under an exterior apparently cold, he concealed a warm heart. Those who knew him best were his most devoted friends. This is not mere eulogy. The writer saw much of him in public life; knew him intimately, and retains a pleasant memory of his many acts of friendship. Judge Mundy's life, it will be seen, was a somewhat checkered one. Though marked in the main by success, it was not without severe trials. Throughout all, he maintained an even bearing. He was not elated by success, or dismayed by calamities. Above all, he was not unmindful that the great end and purpose of this life is the attainment of a better. For years before his death he was an exemplary member of the Protestant Episcopal Church, in whose communion he died, having the confidence of a certain faith, and in perfect charity with the world.

Hon. CHARLES W. WHIPPLE was first appointed judge of the Supreme Court in 1838, and continued to hold the office by re-appointment and election until the time of his death, which occurred on the 29th of October, 1855, at Detroit. He was for two years chief justice of the court. He was born at Fort Wayne in Ohio, whence, in early childhood, he came to Michigan. He received a military education at West Point, but never entered the army. After leaving the military academy he returned to Detroit, and commenced the study of law in the office of A. D. Frazer, Esq., and entered upon the practice of his profession in 1829. He con-

tinued in practice (a part of the time associated with the late James A. Van Dyke, Esq.,) until his appointment to the bench. At the terms of United States circuit court for this district and the Supreme Court of the state, next succeeding his death, resolutions were presented and entered upon the records of the two courts, complimentary to his merits and abilities. He died in the possession of an unclouded intellect, and with an unfaltering trust. It is unnecessary to speak of his intellectual character. These volumes contain the best evidence of his learning and ability as a jurist. For clearness and force, his opinions, herein contained, have scarcely ever been surpassed. The decision in *St. Amour v. Rivard*, vol. 2, may be referred to as a sample of clearness, comprehensiveness and precision. The opinion in *Wight v. Maxwell* and others, usually called the "Globe case," the third reported in this volume, was the last written and pronounced by him. In fact, it was scarcely finished at the time of his death, having been retained by him after its delivery for the purpose of making some verbal amendments. Yet, in its incomplete state, it will be regarded, as it was when pronounced, the model of a judicial opinion. It is believed no better monument to his learning and ability can be desired.

Of those who have occupied places on the bench since the existence of the court, Judges Ransom, Goodwin, Green, Felch, Wing, Pratt, Johnson, Douglass, Copeland and Martin are still living. Judge Ransom is now a resident of the territory of Kansas. Judge Goodwin is judge of the judicial district of the Upper peninsula of Michigan. Judge Green is one of the circuit judges, and until the first of January next, one of the judges of the Supreme court. Judge Felch, who left the bench upon his election as governor, was subsequently elected a senator in congress from Michigan. In 1853 he was appointed by the president one of the commissioners to settle private land claims in the state of California, and during his incumbency resided in that state. Upon the expiration of the office by law, he returned to this state, where he still resides. Judge Pratt now holds the post of American consul at Honolulu, and has been succeeded by the Hon. Benj. F. Graves. Judge Martin still retains his place on the bench, and is chief justice elect of the new Supreme Court. Judge Wing resigned in July, 1856, and was succeeded by Hon. E. H. C. Wilson; since which time Judge Copeland has resigned, and been succeeded by Hon. Sanford M. Green. Judge Douglass, having also resigned, has been succeeded by Hon. B. F. H. Witherell, and Judge Johnson by the Hon. E. Lawrence. These several retiring judges are now in the

practice of their profession. It is felt that a more extended notice of them would not be proper at this time. It may, however, be said of them that as judges they all served the state well; that, whether in public or private life, they are held by the profession and the public in undiminished respect. May they long live in the enjoyment of it.

At the judicial election in April, 1851, Hon. John S. Goodrich, of Genesee county, was elected judge of his judicial circuit, and of the Supreme Court. He did not live, however, to perform any of the duties of judge. He died at Detroit on the 15th day of October, 1851, having been arrested there, on his return from a journey east, by his fatal illness. He was a native of Erie county, New York, removed to this state in 1837, and was admitted to practice in 1841. He died at the age of 36. It is but justice to his memory to say that he possessed attainments of the highest order, a pure and manly character, and those kind and generous qualities of the heart which endeared him to a wide circle of friends. Had he been spared to assume the duties of the position to which he was chosen, it is certain he would have shared its highest honors.

Written in 1857.

COUNTY COURTS AND "SIDE JUDGES."

A County Court, having jurisdiction in cases criminal not capital, was authorized by the Act of the territorial legislature of October 24th, 1815, with one Chief Justice and two Associate Justices, to be held at Detroit until another County should be organized. This court was abolished by the act of April 15, 1833, but, by Act of December 30, 1834, the county judges of Wayne and Brown counties were authorized to hold court. By the Revised Statutes of 1846 these Courts were revived; but were again abolished on the adoption of the Constitution of 1850. This Court had jurisdiction in civil causes involving over $500, and in criminal cases, with one judge appointed and a second judge to be elected, they having been appointed in territorial times.

These Courts are not the most famous described in legal annals. Yet in early periods they served a good purpose. The Associate Justices were in most cases laymen unlearned in the legal lore of the books. Judge ——— once said at Ann Arbor in our hearing, that he never heard of a legal opinion having been rendered by a "Side Judge," except one promulgated away back in the forties. A Side Judge up in M——, on one hot July afternoon, wiped the perspiration from his capacious forehead; then his lips moved. The Sheriff supposed that he

was thirsty, and offered him a glass of cold water. But the Judge motioned it away with a judicial wave of the hand, and gave the following opinion: "It's a pretty hot day." There was no appeal from this decision. As common sense is the last analysis of law, many of these judges not learned in technical law dealt out equal justice untrammeled by the complex machinery of some later tribunals. While such eminent men as judges Fletcher, Chipman, Campbell and Witherell presided, there was probably little if any need that Associate Justices should formally announce their opinions, these being voiced by the presiding judge. Some of the associate judges were distinguished lawyers, among them Edmund Mundy.

We have but a very incomplete list of these associate justices. Hoping to make it more full we shall give the names farther on.

CIRCUIT COURTS.

The act of December 9, 1800, provided for a Circuit Court for Wayne County. The principal duties were to hear and determine appeals from the Common Pleas. The Judge of the Circuit was to be appointed by the Governor. Silas Farmer says in his History of Detroit that he can find no record of any appointments or acts under this law. If such a minute and thorough searcher after facts has failed, we shall not—at least in this July weather—go over the field.

By the Act of April 8, 1827, Michigan Territory first provided for the appointment of Circuit Judges. One of the Judges of the Supreme Court was to preside. The Court had civil jurisdiction in matters involving over $1,000. By later laws the sums involved was enlarged.

By the Act of March 26, 1836, three Circuits were provided. Four Circuits were provided by Act of March 25, 1830. On April 30, 1840, the Judges were authorized to divide the State into five Circuits. By the Revised Statutes of 1843, two additional judges were provided, with same number of new Circuits. By Constitution of 1850, the Circuits were increased to eight. By the Act of February 6, 1857, the Supreme and Circuit Courts were divorced, the system now in vogue being established. The Supreme Court retains its appellate jurisdiction, but judges of that Court no longer act as Circuit Judges.

The Upper Peninsula, by Sec. 1. Art. 19, Con., was made a separate District with a District Judge and District Attorney. For some years

that portion of the State has been divided up into Circuits as is the State in general.

Without recounting all the changes, we may state that at present there are twenty-eight Circuits,—there being three judges of the Wayne Circuit, besides a Superior Court in the City of Detroit and a Superior Court in the City of Grand Rapids, with jurisdiction within the municipal territory similar to that of the Circuits, except that they have no appellate jurisdiction.

One reason for the large number of Circuits is the beggarly salaries which, by the Constitution of 1850—amendments to which are in nearly every instance voted down—are doled out to Circuit Judges,—$1,500. Men qualified for the position cannot, from a financial standpoint, afford to accept the place. The legislature has sought to make their duties as light as their salaries, so that Circuit Judges are almost as numerous as Probate Judges. The people of a county not unfrequently pay $3,000 to $10,000 for the luxury of a trial. They usually submit gracefully to this. But let the legislature propose an amendment by which we shall have fewer circuits and better salaries for Judges, and the rural population especially see in this the last prop to liberty falling, and vote it down, in the name of economy, with a "hurrah!"

It is true that our Circuit Judges are, as a rule, eminently qualified for their positions, but this is in spite of the low salaries, not because of them; as was said in 1860 by an American statesman, "Our country is great *in spite* of slavery, not *because* of it."

Further facts in relation to Circuit Courts may be found in the Biographies of the several Judges.

PROBATE COURTS.

Courts of this nature were instituted by virtue of the Act of August 30, 1788, for the Northwest Territory, and under different acts the system has continued. These are State, not County office. (40 Mich. 585.) The name of the Court arises from the proof or probate of wills. The responsibilities of Probate Judges are grave and highly important, and they should be selected by the people with great care.

DISTRICT COURTS.

Act of the 25th of January, 1805, provided for these Courts to be held at Port Huron and Detroit, on the first Monday in May and the third

Monday in August. One of the Territorial Judges presided over this Court. The original jurisdiction given to the District Court was in cases involving over $20.00, except where they were given exclusively to other courts. This Court appointed listers, appraisers and collectors of taxes, who assessed and collected the Territorial taxes.

The Court Journal for August 19, 1805, states that the court met at 11 a.m., on the Grand Square of the new city of Detroit, under green boughs. This Court lasted until September 16, 1810, when the matters under its jurisdiction were transfered, with other powers, to the Supreme Court. Among the judges of this court were George McDonald, Chief Justice ; and James Abbott, Jacob Visger and Robert Abbott, Associate Justices.

DISTRICT CRIMINAL COURTS.

These were authorized for Counties by the Act of February 2, 1840. The presiding Judge was appointed by the Governor ; the Circuit Judges were *ex officio* judges of the Court. By the Act of March 9, 1843, this Court was abolished, and District Criminal Courts for the State instituted. By Act of April 3, 1843. the matters these Courts had cognizance of were turned over to the County Courts.

SUPREME COURT OF THE STATE.

This was provided for by the Act of March 26, 1836. Its jurisdiction, then as now, was almost altogether appellate. First three judges were appointed by the Governor and Senate, for a term of seven years ; each judge also presided over one of the Circuit Courts. The Revised Statutes of 1843 provided for one additional judge. By the Act of April 3, 1849, four judges were provided for. The Conttitution of 1850 provided for eight circuits, the judges of which also constituted the Supreme Court. By the law of February 16, 1857, great changes were made in the judicial system of the State. A new Supreme Court was constituted, separate and distinct from the Circuit Courts. It provided for one Chief Justice and three Associate Justices, to be elected on the first Monday of April, 1857, and to have an annual salary of $4,000, One of the Judges elected at that time, Hon. James V. Campbell, still continues to adorn and ably fill the place he has occupied with such marked success.

CHANCERY COURTS.

Judge Campbell, in his preface to the Annotated Edition of Walker's Chancery, says:

"The Court of Chancery, which was organized immediately on the formation of a State government, was presided over by a Chancellor, who held Court at regular terms in, at first, three, and afterwards, four different places, but with general jurisdiction over the entire State."

The first Chancellor was Elon Farnesworth. His decisions are reported in Harrington's Reports. Randolph Manning was the only other Chancellor. Most of his decisions are found in Walker's Chancery Reports. Both were eminent at the bar and on the bench. See Biographies elsewhere in this volume.

ORPHANS' COURTS.

By the Act of October 1, 1795, of the Northwest Territory, this Court was authorized. It was held by the judges of the Court of the General Quarter Sessions. Its jurisdiction was similar to that of our present Probate Courts, although it exercised jurisdiction over executors and trustees, similar to that now exercised by Courts of Chancery.

BIOGRAPHIES.

ABBOTT, JAMES.—His father, bearing the same name, was a native of Ireland and established himself in the wilds of Michigan as a fur-trader before the Declaration of Independence, and the son was born in Detroit in 1775. He commenced active life by following the same business of his father; was postmaster of Detroit from 1808 until 1827, excepting when the English were in possession; was for many years Receiver of Public Moneys for the Land Office in Detroit; served as a Quarter-master General in the war of 1812, as Major of Militia in 1835, also as Judge for several years of the Court of Common Pleas; and died in Detroit, full of honors, March 12th, 1858.

ARNOLD, DAN. J.—Was born November 17, 1838, in what is now the township of Gunplain, Michigan, where his father located in 1833. When old enough to work, he worked on the farm in the summer and attended school in the winter. Later, he attended school at Schoolcraft, and at Otsego, and one winter at the Normal School at Ypsilanti. He secured

a good common school education and made a successful teacher. He entered the law department of the University in 1859, graduated in March, 1861, and was at once admitted to practice in Washtenaw Circuit, and later in the United States Courts. He studied with Balch & DeYoe, of Kalamazoo, the remainder of the year. In 1862, he went into the office of B. B. Bassett, of Allegan, with whom he was in partnership until Mr. B. retired on account of ill health in 1865, when he entered into partnership with J. W. Stone, which continued till 1873. He was elected Circuit Court Commissioner in 1862, and Judge of Probate in 1864, and re-elected in 1868,—holding the office eight years. He was appointed Circuit Judge in 1874, elected in 1875 on the Republican ticket, over Hon. F. J. Littlejohn, democrat.

BACKUS, HENRY T.—Was long a prominent member of the Detroit bar; was President *pro tem* of the Senate and Acting Lieutenant Governor in 1861; was appointed by President Lincoln Judge of Arizona Territory. Died in Detroit several years ago.

BACON, NATHANIEL.—Was born at Ballston, N.Y., July 14, 1802. He graduated at Union College in 1824. Studied law in the office of Judge Sampson, Rochester, N.Y., and practiced there three or four years. In 1833 he went to Niles, Mich. Held various offices of trust. Was Prosecuting Attorney for several years. In 1855 he was elected Circuit Judge, and *ex-officio* Supreme Judge. In 1857 he was again elected Circuit Judge, under the new law, for six years; in 1866 was again elected, vice Perrin M. Smith, deceased, and in 1869 was again elected for six years. He died suddenly at Niles, his home, Sept. 9, 1869.

BALDWIN, AUGUSTUS C.—Was born in Salina, New York, December 24th, 1817; received a common school education, and losing his father when young, became dependent upon himself for a support. In 1837 he came to Michigan, and settled in Oakland county; studied law while teaching school, and came to the bar in 1842; elected to the Legislature in 1844; also in 1846. In 1853–4 Prosecuting Attorney for Oakland; delegate to the Charleston and Baltimore Democratic Conventions in 1860, and in 1862 was elected to Congress, serving on the Committee on Agriculture and Expenditures in the Interior Department. He was one of the few Democratic members who voted for the abolition of slavery. He was a delegate to the Chicago Convention in 1864, and to "Philadelphia National Convention" in 1866. He was Mayor of the city of Pontiac in

1874, and in 1875 was elected Judge of the Sixth Judicial Circuit. In 1845 he was appointed General of the fifth brigade of the State Militia, which position he held for seventeen years, till the close of the militia system. Resigning the office of Circuit Judge in 1878, he resumed the practice of law at Pontiac.

BATES, ASHER B.—Was one of the early settlers in Detroit after Michigan became a Territory. Studied and practiced law. After holding the office of Recorder for some years, he was, in 1838, on the resignation of Augustus S. Porter, made Mayor of Detroit. In 1815 he was appointed a Commissioner by the General Government to prosecute certain business in the Sandwich Islands, after which he became a subject of the king of those Islands, and was made Attorney-General. We have not at hand further particulars as to Judge Bates.

BAXTER, JOHN.—Was born in North Carolina in 1824. He practiced law in Wedern, North Carolina, till 1857, when he removed to Knoxville, Tenn. He was twice Speaker of the North Carolina House of Representatives, being then a Whig. He was an active and fearless Union man during the war. Prior to his appointment as U. S. Circuit Judge he had for a long time enjoyed a large and lucrative practice. He was appointed Judge of the Sixth Federal Circuit (including Michigan, Ohio, West Virginia, Kentucky and Tennessee) in 1877 to succeed Halmer H. Emmons, deceased. As a judge he promptly decides the causes coming before him with much ability and perspicuity.

BECKWITH, CHARLES.—Was born at Alexander, N. Y., in 1852. Afterwards removed to Kalamazoo, Mich., whence he went to the State University, graduating in the class of 1849. Admitted to the bar at Holly Springs, Miss., in 1852. From 1853 to 1879 practiced law at Buffalo, N. Y. Elected City Attorney of Buffalo in 1864; member of Buffalo Board of Education for several years; also Alderman. In 1879 was elected Judge of the Superior Court of Buffalo on the democratic ticket for a term of 17 years at an annual salary of $6,000. He stood high at the bar when in practice, and is eminently successful as a judge. [We admit his name here, as we do those of others who have not been Judges of Michigan Courts, but who have been identified with this State and have been elsewhere elevated to the bench.]

BIRNEY, JAMES.—Was born at Danville, Ky. He is the eldest son of the late James G. Birney, once abolition candidate for President. He was

educated at Centre College, Ky., and at Miami University, O., graduating from the latter in 1836. During 1837–8 he attended the Yale law school. Studied law in Cincinnati, O., and practiced there for eleven years. His office during a portion of this time was "cheek by jowl" with that of Salmon P. Chase. In 1858, B. was elected State Senator from the Saginaw District. In 1860 was elected Lieutenant Governor of Michigan. In 1861 he was appointed Judge of the Bay Circuit. He held the office for four years. In 1871 he established the *Bay City Chronicle*. In 1872 was appointed Centennial Commissioner for Michigan. For a number of years prior to 1883 he was Minister to the Hague.

BROWN, CHARLES R.—Was born in Columbia, Lorain County, Ohio, in 1836; educated at the Baldwin University; was for a time Principal at the Fredonia Academy in Portage County, and in 1855 commenced the publication of a paper in Cuyahoga County, called *Pure Grit*, which was not successful. He subsequently studied law, and in 1860 removed to St. Joseph, Berrien County. Not long afterwards he was elected Circuit Court Commissioner; in 1866 he was elected to the Legislature; in 1867 he removed to Kalamazoo, and in April, 1869, he was elected a Judge of the Ninth Judicial Circuit. He is the editor of two volumes of "Michigan Nisi Prius Cases," published about twelve years ago. Since retiring from the bench he has practiced law, first at Port Huron, and latterly at St. Ignace.

BROWN, HENRY BILLINGS.—Was born at Lee, Mass., March 2, 1826. His father, Billings Brown, was a manufacturer. His mother was a lady of marked intelligence and strength of character. The Brown family settled in Massachusetts early in the seventeenth century, but not long after emigrated to New London County, Conn. Judge B. graduated from Yale College in 1856; then devoted a year to study in Europe. He took a partial course at Harvard Law School, and completed his law studies in the office of Walkers & Russell, (C. I. & E. C. Walker and Alfred Russell) at Detroit. Admitted to the bar in 1860. Was for some time Assistant U. S. District Attorney during Alfred's Russell's term as District Attorney. Was married July 13, 1864, to Caroline, daughter of Samuel Pitts. Was Judge of the Wayne Circuit for several months in 1868, to fill vacancy. In 1875 he was appointed Judge of the U. S. District Court, Eastern District of Michigan, vice Longyear, deceased. He still holds this office. He has several times been called to preside as Circuit Judge in the Tennessee and Alabama U. S. Circuit Courts. He

has made several tours of Europe. He is a scholarly man, of studious and industrious habits; dispenses justice without partiality, and fills his station with distinguished ability. He is specially versed in Admiralty law, and has edited one volume of Admiralty Cases.

BROWN, MICHAEL.—Was born April 20th, 1841, in Pulaski, Indiana; was educated at Wabash College; and graduated from the law department of the University of Michigan in 1868. The same year he commenced practice at Big Rapids, where he still resides. He was Circuit Court Commissioner from 1868 to 1870; was Mayor of Big Rapids in 1878. He was appointed Judge of the Fourteenth Circuit in 1876, and elected to the same office without opposition in 1878.

CADILLAC, ANTOINE DE LA MOTTE.—Was founder of Detroit, in 1701. In 1797 he was made Commandant of Affairs of the Lake Country including what is now Michigan, and received as such a tract of land fifteen miles square, "wherever on the Detroit River the new fort should be established." He built Fort Pontchartrain on the present site of Detroit. He was judge by virtue of his office. We have no space for any further reference to this remarkable man. See Mrs. E. M. Sheldon's "Cass Manuscripts" (1856), and Silas Farmer's "History of Detroit and Michigan" (1884).

CAMPBELL, HENRY MONROE.—Was born in Stillwater, Saratoga county, New York, September 10, 1783. In 1810 he removed to Buffalo, where he resided until May, 1826, when he removed to Detroit, where he lived till he died, in January, 1852. Most of his life was spent in business. During the War of 1812 he served as Lieutenant of a volunteer artillery company organized in Buffalo. He was instrumental in getting up the parish of St. Paul's Church, Buffalo, and was also constantly Warden or Vestryman in St. Paul's, Detroit. He was active in organizing the Episcopal Church in Michigan into a diocese in 1833 and 1834, and was one of the first delegates to the General Convention in 1835, and was for many years a member of the standing committee of the diocese. He was Judge in the Court of Common Pleas at various times both in New York and Michigan. He was the father of Judge James V. Campbell, of Detroit.

CAMPBELL, JAMES VALENTINE.—Was born in Buffalo, New York, February 25, 1822. His father, Henry M. Campbell, was a merchant

who brought his family to Detroit in 1826, and who held in New York and afterwards in Michigan, the judicial post of County Judge. The son was educated at Flushing, Long Island, and graduated at St. Paul's College, in July, 1841. He was admitted to the bar in October, 1844, at Detroit. In 1857, upon the establishment of the Supreme Court as at present constituted, he was elected one of the Judges, receiving 50,912 votes to 38,892 cast for David Johnson (Dem.), who had been one of the Judges of the Supreme Court under the former system. He has been twice re-elected; in 1863, when he received 69,283 votes to 61,331 cast for his former competitor, Judge Johnson, and in 1871, when he received 93,269 to 74,840 cast for D. Darwin Hughes (Dem.) Judge Campbell has been closely identified with the advancement of educational and refining influences, especially in Detroit, and was President of the Young Men's Society there in 1848, and a member of the Board of Education for several years. In 1859 he was chosen Marshall Professor of Law in the Law Department established that year in the University of Michigan, and he has held the chair ever since. He received the degree of Doctor of Laws from the University in 1866, and was the first of a very few eminent men upon whom the University has conferred the degree. In 1876 he published "Outlines of the Political History of Michigan." He is a member of St. Paul's Episcopal Church of Detroit, and of the standing committee of the Diocese of Michigan. He was a Whig so long as the Whig party maintained a political existence, and has since been a Republican. He was re-elected to the Supreme bench April 7, 1879, for the fourth term. He has met every responsibility with fidelity and ability. As a Judge he has borne himself with a dignity and courtesy, and administered justice with a high talent and calm and equable judgment, that have challenged the favorable regard of the bar and people. The alumni of the Law Department of the State University, an increasing army, look upon Judge Campbell as a personal friend, as well as a distinguished Professor of Law and Judge.

CHAMBERS, FITZWILLIAM H.—Was born in 1832. His father, a graduate of the Western College of Physicians and Surgeons at Fairfield, Herkimer county, N.Y., practiced medicine many years at Ogdensburg, N.Y., and then removed to Upper Canada, where he became a member of the Medical Board of Canada. He entered the Union army as surgeon during the late war, and was stationed at Newbern, N.C. Judge Chambers was educated partly in New York and partly in Canada. He commenced the study of law in 1849, and was admitted to the Law Society

of Upper Canada after undergoing a classical examination at Osgoode Hall. Having completed the five years' service required in an attorney's office, in 1855, after examination by the Benchers of the Law Society, he was duly enrolled as a Barrister at Law. In the same year he married Margaret Herver, of Ogdensburg, N.Y. In 1863 he was elected by the Liberal party to a seat in the Canadian Parliament, which he held four years. He is a member of the New York and Chicago Bars. In 1872 he was elected Prosecuting Attorney for Wayne County, and was re-nominated by acclamation in 1874. In 1875 he was nominated for Judge by the Republicans of the third circuit, but there being three candidates in the field, he was defeated. In 1877 he was nominated as a Representative in the State Legislature, but, in common with all the Republican ticket in Wayne County, was defeated. In 1879 he was appointed by Governor Croswell, on recommendation of the bar, irrespective of party, to fill the vacancy caused by the resignation of Judge Reilly. In 1880 he was elected to the same office, and re-elected April 4, 1881, for the full term. His ability and fairness on the bench, and his courteous and genial manners, render him a great favorite with the bar and the people.

CHAMPLIN, JOHN W.—Was born at Kingston, N.Y., in 1831. He commenced the practice of law in Michigan in 1855, and continued in active practice at Grand Rapids till elected to the Supreme Bench. He has been Judge of the Recorder's Court of Grand Rapids, Mayor of that city, and member of the Legislature. In April, 1883, he was elected Judge of the Supreme Court, vice Graves, whose term expired, and assumed the duties of his office January 1, 1884. He is an able judge, and is personally a favorite with the bar.

CHIPMAN, HENRY.—Was born July 25, 1784, in Rutland County, Vt. His father was an officer in the Revolutionary War; was afterwards successively United States Senator from Vermont and Chief Justice of that State; was one of the earliest law authors in this country, text books, reports, etc., being the result. Henry Chipman graduated at Middlebury College in 1803. In 1866 he was at the commencement as the sole survivor of his class, and became Doctor of Laws. Studied law in Vermont, but his health failing, he went to the West Indies, residing at Jamaica four years. His health being restored, he removed to South Carolina; practiced law at Waterborough, and was intimately acquainted with Huger, Pettigrew, and other leaders of the South Carolina bar. He here became acquainted with Martha Mary Logan, daughter of John Logan,

a wealthy planter, and afterwards married this fair, bright, intelligent daughter of the South. Removed to Detroit in 1824, practiced law and edited the Michigan *Herald*—was then, and always, a clear and vigorous writer—from 1827 to 1832 was Judge of the Territorial Supreme Court; in 1841 made Judge of the Criminal District Court, the district comprising Wayne and several other counties. Was long one of the vestry of St. Paul's Church, and was one of the founders and officers of the Mariner's Church. Was a Whig till the party died; in 1860 voted for Bell and Everett. He died a few years later. He had nine children. His eldest son, Henry Logan, died at 32, a Lieutenant in the navy; his surviving son, John Logan, is the eminent lawyer and judge, so well known in Detroit, his home, and throughout the west.

CHIPMAN, JOHN LOGAN.—Was born at Detroit. His father, Henry Chipman, and his grandfather, were distinguished judges. Was educated in the schools of Detroit and the University of Michigan. Admitted to the bar. Was City Attorney four years; representative in Legislature two years (1855–6); Attorney for Board of Police Commissioners from 1865 to 1878; democratic candidate for Congress in 1866. Elected Judge of the Superior Court of Detroit in April, 1879. Judge Chipman was eminently successful at the bar, and is equally so on the bench. He possesses talents of a high order. As an advocate his powers are wonderful.

CHRISTIANCY, ISAAC P.—Was born in Johnston, N.Y., in March, 1812; received a common school and academical education, which he fought for single-handed; when thirteen become the main support of his father's family, and followed school teaching for their support. In 1835 he began the study of law; in 1836 removed to Monroe, Michigan; there completed his legal studies with Robert McClelland, and practiced law from 1838 to 1857. Was Prosecuting Attorney for Monroe county, 1841–6; in 1848 attended the Buffalo Free Soil convention of that year; in 1849 he was elected to the State Senate; in 1852 he consented to be the candidate of the Free Soil Party for Governor, although he knew there was no hope of election at that time; and he was a prime mover in the political combination of 1854 which resulted in the organization of the Republican party which was not only born in Michigan but received its name at a convention held in the city of Jackson. He was a delegate to the Philadelphia convention of 1856 which nominated Fremont for the Presidency. He then purchased the Monroe *Commercial*, which had been a Democratic paper down to that time, and became its editor; was an unsuccessful

candidate for the United States Senate, (made so by his party), and in 1857 he was elected Judge of the Supreme Court of the State, and in 1865 was re-elected by the unanimous vote of all parties. He was a zealous supporter of the war for the Union, and performed some service on the staff of General A. A. Humphrey, as well as that of General G. A. Custer. He was elected to the United States Senate to succeed Z. Chandler, in 1875. In 1879 he resigned his seat in the Senate, and was appointed Minister to Peru. He has resumed the practice of the law at Lansing.

COCHRANE, LYMAN.—Was born in New Hampshire, in 1825. Was graduated from the Michigan University in the same class with Senator Thomas W. Palmer, Judge Charles Beckwith, of Buffalo, the late Dwight May, Rev. Dr. Park S. Donaldson, Prof. Edmund Andrews, Thos. S. Blackmar, former Circuit Court Commissioner of Wayne County, T. R. Chase, Necrologist of the Alumni Association of the University, and others who have become widely known. Took the degree of LL.B. at Ballston Law School, in 1850. Admitted to the bar in Detroit, where he practiced till his election, in 1873, as the first Judge of the Superior Court of Detroit as a democrat. Served a term as representative in the Legislature, 1871-2. He died at Detroit, February 5, 1879. Judge C. was an able lawyer, especially in Chancery, a true friend and a learned and upright judge. He was learned in the lore of the books. He once remarked to a friend that he took great delight in devouring the best thoughts of the world's best authors, and revelling in them in his own mind all by himself. Had he given the world some of his own thoughts in written volumes the libraries of the land would have been enriched thereby. His unexpected death was deeply deplored by the bar and the people who loved him. The following tribute was written soon after his death by a member of the Detroit bar:

Inexorable the high decrees of Heaven,
That set the narrow bounds of human life;
The warrior falls amid the battle's strife—
The men of Commerce from the mart are driven,
The toiler quits the weary task he plies,
The student's midnight lamp no longer burns,
The path of age toward the dark river turns,
And even merry childhood fades and dies.
And now the learned, kind, noble, generous one,
That judged in mercy only yesterday—
His form is borne to mix with common clay,
Away from Courts, from life, from air, from sun;
And yet in Courts, in hearts, in homes remain
Sweet memories, in which he lives again.

COLE, HENRY S.—Was a native of Canandaigua, N.Y.; came to Detroit in 1827. He was judge of Recorder's Court in 1831; succeeded Judge Fletcher as Attorney General of the Territory. He died at Detroit in 1836, universally lamented. He was an able lawyer, and a courteous and popular citizen. His two brothers, Joseph C., and Thomas G., were prominent citizens of Michigan, residing at Monroe.

COOK, WILLIAM A.—Now of Washington, D. C., was Judge of the Recorder's Court of Detroit in 1849. He practiced law in Detroit for several years. Was principal clerk of the Pre-emption Division of the General Land Office from 1861 to about 1870, since which he has practiced law in Washington. He is an able lawyer, especially as a trial attorney in criminal cases.

COOLEY, THOMAS MCINTYRE.—Was born at Attica, N.Y., January 6, 1824. His father was a farmer, descended from an early New England family of farmers. After a very good academic education he taught school for three terms, and in September, 1842, removed to Adrian, Michigan, where he completed his law studies with Tiffany & Beaman. Admitted to the bar in January, 1846, and became, for a time, the partner of Judge C. A. Stacy, of Tecumseh; but returned to Adrian in 1848, and took part in the political campaign of that year as a supporter of Van Buren. At Adrian was a member of the firm of Beaman, Beecher & Cooley, and afterwards of Cooley & Croswell. In 1857, was elected by the Legislature to make the first compilation of general statutes of the State, which was completed in a year. In January, 1858, was appointed by the Supreme Court as a Reporter of its decisions, and in that office published eight volumes of Reports. In 1864, on the decease of Mr. Justice Manning, was elected a Justice of the Supreme Court by a vote of 80,491. Ex-Governor Felch, who was the opposing candidate, received 68,898. Was re-elected in 1869 over D. Darwin Hughes by a vote of 90,705 to 59,886; and again, in 1877, over Henry F. Severens, by a vote of 112,653 to 85,748. In 1859 he was chosen by the Regents of the University, with James V. Campbell and Charles I. Walker, to organize the Law Department of that Institution, and removed to Ann Arbor for that purpose, where he has ever since resided, giving instruction regularly in the Law Department. In 1877 he was invited by the Trustees of the John Hopkins University to give a course of lectures in Baltimore; and in compliance, lectured for four weeks. In 1878, on a second invitation, he gave a course of lectures in that Univer-

sity, on the new amendments to the Federal Constitution. In 1868 he published his Treatise on Constitutional Limitations, which has now passed through four editions. Since then he has published a Treatise on the Laws of Taxation, and another on the Law of Torts. He has also edited an edition of Blackstone's Commentaries, of Story on the Constitution, and of Harrington's Chancery Reports, and was the editor of the law articles in the second edition of the American Cyclopedia. He has also written largely for Reviews, sometimes over his own signature, and sometimes not. His name was freely mentioned for the place on the Federal Supreme bench now held by Stanley Mathews. Judge Cooley married Mary E. Horton, at Adrian, December, 1846, and has had six children, all of whom are now living, and two of them men of family.

COOLIDGE, HENRY H.—Was born at Leominster, Mass., August 9, 1811; educated at Amherst College; in 1836 removed to Cass County, Mich.; admitted to bar in 1844. In 1872 was appointed Judge of the Niles Circuit, and was elected in 1876 to that office. He has held other positions. He stands high, where known, as a man, citizen and officer.

COPELAND, JOSEPH T.—Was one of the Judges of the Oakland Circuit from 1850 to 18—, under the system that made him also one of the Judges of the Supreme Court. He was during the war Colonel of the Fifth Michigan Cavalry. [The one from whom we expected *data* for a sketch having failed to send it, further facts are not given.]

DRAKE, THOMAS J.—Was long a prominent lawyer in Michigan; served one term as Prosecuting Attorney of Oakland County, securing the office by a "still hunt," his party being in the minority; was State Senator in 1839, '40 and '41; being President *pro tem* in '40 and '41. He was a Whig presidential elector in 1840 and a Republican elector in 1856. He was searching in his examination of witnesses on the stand. But we saw him once on the stand when he did not relish the style of examination he indulged in. He was an able lawyer. He was Judge of Utah Territory for several years. Returning to Pontiac, he lived there till his death in 1874. Oakland County had a remarkably able bar in Drake's time, and he held his own with the best.

EDDIE, CLARENCE E.—Was admitted to the bar at Detroit, and engaged in practice in the Upper Peninsular, and held the office of Judge of the 12th Circuit for several years preceding his death in 1868.

EMERICK, FRANK.—Of Alpena, was born at Ypsilanti, Mich., in 1843; was educated at the public schools at Ypsilanti, and at the State University; volunteered his services to his country at the age of 16, in the spring of 1864, and served until the close of the war. Mr. Emerick was admitted to the bar in March, 1874, at Ann Arbor, and afterwards held the office of Circuit Court Commissioner and Prosecuting Attorney for Washtenaw county. He formed a law partnership with Hon. John F. Lawrence, and practiced law at Ann Arbor until the spring of 1881, when he removed to Alpena. He was elected Judge of the 26th Judicial Circuit April 3, 1882.

EMMONS, HALMER H.—Was born in New York. Assisted his father as editor of a paper. Admitted to the bar in New York. Commenced the practice of law at Detroit in 1840. In 1844 he became a partner of James A. Van Dyke. The firm of Van Dyke & Emmons had a large practice. In 1853 his health became somewhat impaired. After this he was counselor for several railroad companies, and enjoyed a large income. In 1870 he was appointed by the President as Judge of the 6th Federal Circuit. He was distinguished as a jurist as he had been as a lawyer. He died at Detroit in 1877.

FALLASS, SILAS S.—Of Cadillac, Judge of the 28th Judicial Circuit, is thoroughly a son of Michigan, having been born in, and lived his entire life in this State. He located in the county of Wexford in the fall of 1872, soon after his admission to the bar, and in the fall of the same year was elected Prosecuting Attorney of that county, which office he held for two years. He was a member of the Board of Supervisors of Wexford county for five years, and was a leading actor in many of the stirring events of the famous "Wexford County Seat War." In April, 1882, he relinquished a lucrative practice to accept the position of Circuit Judge of the 28th Judicial Circuit, (a new Circuit organized by the Legislature of 1881), by appointment from Governor Jerome. He was unanimously nominated for election as his own successor by the bar convention of the Circuit, and was elected in the following November by 628 majority over George L. Alexander, the Republican candidate.

FARNSWORTH, ELON.—Was born at Woodstock, N. H., February 2, 1799, and died March 24, 1877. His father was a farmer. Elon obtained a good education in New England schools. He had a thirst for knowledge and was ever a student. He removed to Detroit in 1812, and began the study of law with Judge Solomon Sibley. When Judge S. became

judge, he continued his studies with Mr. Whitney, and succeeded to his business on the latter's death. He rapidly rose to fame. Had an extraordinary memory; seemed to reach conclusions unhesitatingly. In 1834 he was elected to the Legislative Council. In 1836 he was appointed Chancellor. He filled this office with great credit till 1843, when his poor health led him to resign. He was Attorney-General for two years, appointed by Gov. Barry. In 1839 he was the Democratic candidate for Governor. He was Regent of the University from 1836 to 1858, except between 1843 and 1846. He was for years a Director in the Michigan Central R. R. Co. Was President of the Detroit Savings Bank from 1849 till his death. He visited Europe in 1855. He was a prominent member of St. Paul's Church from the time of its organization. He died at Detroit March 22, 1877. (See Judge Campbell's memoir in introduction to 38 Mich. Rep.)

FELCH, ALPHEUS.—Was born in Limerick, Me., September 25, 1806. Graduated at Bowdoin College. Removed to Ann Arbor, Michigan, when a young man. Member of the Legislature in 1836–9; Bank Commissioner in 1838–9; Auditor General in 1842; same year elected Judge of the Supreme Court; elected Governor in 1845; elected United States Senator in 1847. From 1853 to 1856 he was one of the United States Land Commissioners to settle claims under the treaty of Gaudalupe Hidalgo. Since then he has practiced law at Ann Arbor. He is a man of large ability, and has the esteem and confidence of all who know him.

FULLER, CEYLON C.—Was born at Chardon, Geauga County, Ohio, on the 25th day of June, 1832, where he resided until November, 1845. He then removed with his parents to Grand Rapids, Michigan, where he attended school for a time, and then attended Hiram College, in Portage County, Ohio, where he was at one time a room-mate of the late President Garfield. In June, 1860, he was admitted to the bar at Grand Rapids, and removed to Big Rapids, Mecosta County, where he has since been engaged in the practice of his profession, enjoying the esteem and confidence of the people to such an extent that in 1868 he was elected a member of the lower house of the Legislature, and has held other offices of trust and responsibility bestowed upon him by the people of his own county and city. In the Spring of 1882 he was elected Judge of the Twenty-ninth Judicial Circuit, which was newly organized by the Legislature of 1881, consisting of the Counties of Mecosta and Newaygo. Judge Fuller was elected on the opposition ticket against the regular Republican nominee, Geo. M. Luton, of Newaygo, by a large majority.

GAGE, CHAUNCY H.—Was born at Detroit June 17, 1840. Removed to Saginaw with his parents in 1849; resided at Saginaw City and East Saginaw since. Studied law with Messrs. Webber & Wheeler of East Saginaw. Admitted to the bar in 1862, and has practiced in his profession since at East Saginaw. He was Enrolling Clerk of the State Senate for the years 1857–8. Member Board of Education in 1862. Prosecuting Attorney of Saginaw County 1863 to 1867. Recorder, East Saginaw, 1871 and 1872. City Attorney 1878. He was elected Judge of the Tenth Circuit in the Spring of 1881, on the non-partisan ticket, for six years from January 1, 1882.

GAGE, DEWITT C.—Was for some time prior to 1882 Judge of the Saginaw Circuit, and is now in practice at East Saginaw. His modesty prevents us from giving a longer sketch of a good judge.

GASKILL, SILAS B.—Was appointed judge of the Oakland and Lapeer Circuit, April 17, 1880, vice Baldwin, resigned, and held the office till January 1, 1882. For many years prior to his going on the bench, he was a prominent lawyer at Lapeer. Since he left the bench, we understand that he has been, and is, engaged in the practice of law in Dakota.

GOODWIN, DANIEL.—Was one of the early emigrants to the Territory of Michigan, where he entered upon the practice of law. He was for many years United States District Attorney for Michigan; was subsequently a District Judge; served repeatedly in the State Legislature and was president of the Constitutional Convention of 1850. He appeared for the people in the great trial in 1851, known as the "Railroad Conspiracy case." He has been Judge of a judicial circuit in the Upper Peninsula for many years.

GRANT, CLAUDIUS B.—Of Houghton, was born at Lebanon, York County, Maine, October 25th, 1855; entered the University of Michigan, graduating therefrom in the classical course in 1859. Teacher in the Ann Arbor High School one year and principal two years. In the summer of 1862 he volunteered his services to his country and entered the U. S. service as Captain of Company D, 20th Michigan Infantry. Major November 21, 1863. Lieutenant Colonel December 20, 1864, and on the same day received a commission as Colonel, but did not muster for want of the required number of men in his regiment. Resigned as Lieutenant Colonel March 11, 1865, returned to Ann Arbor and at once commenced

the study of law in the law department of the University of Michigan. Admitted to the bar June, 1866, and began practice in Ann Arbor with Hon. Alpheus Felch. Elected Recorder of Ann Arbor in 1866. Appointed postmaster in 1857. In the fall of 1870 he was elected representative to the State Legislature, and was re-elected in 1872, and in 1873 was chosen speaker *pro tempore* of the House of Representatives. Elected Regent of the University in 1871. In 1872 appointed by President Grant alternate commissioner for the State of Michigan under the law authorizing the Centennial Commission. In 1873 removed to Houghton, and since that time has been engaged in the practice of law. Elected prosecuting attorney of Houghton County in 1876. Mr. Grant was elected Judge of the 25th Judicial Circuit in April, 1881, but still continues the practice of law with his other duties. He is a Republican in politics.

GRAVES, BENJAMIN FRANKLIN.—Was born at Rochester, N. Y., October 18th, 1817, of New England parents. He worked on his father's farm when a boy, but at the age of twenty was disabled by dangerous illness from physical labor, and began studying law. In October, 1841, he was admitted to the bar at Rochester. During the following winter he was journal clerk of the New York Senate. In 1843 he went to Battle Creek, where he now lives, and practiced law there until 1857, being meanwhile made a Master in Chancery, and was three times elected magistrate. In 1857 he was appointed Judge of the Fifth Circuit to fill a vacancy, and was therefore a member of the Supreme Court, under the old system. When his term expired under his appointment he continued in the Circuit Judgeship by regular election. He held sixteen circuits a year, kept full and accurate minutes in his own hand, of the work of his court, wrote out his charges and held night sessions, until, in 1867, he was elected to the present Supreme Court, receiving 80,819 votes to 55,865 for Sanford M. Green, (Dem)., who had been a member of the Court under the old system. He was re-elected in 1873 as the candidate of both political parties, and received their joint vote, amounting to 208,427. He was originally a Democrat, was a Free-Soiler in 1848, and at the repeal of the Missouri compromise and the attempt to force slavery into the territories he became a Republican. On his retirement from the bench, January 1, 1884, he was tendered a reception by the bar of the State, at Detroit.

GREEN, SANFORD M.—Was born May 30th, 1807, in Grafton, N. Y. and was admitted to the bar in 1832. Removed to Michigan in 1837, and

settled in Owosso. Elected to the Senate in 1842; appointed Commissioner to revise the statutes in the spring of 1844, and reported to the Legislature in 1846. In 1846 superintended the publication of the revised statutes. Elected to the Senate again in the fall of 1845, and served two years. Appointed Judge of Supreme Court in March 1848, and held that office until January 1st, 1858, and was presiding Judge two years of that time. From January 1, 1858, to April 1, 1867, and from June 1872, to the present time, he held the office of Circuit Judge. In 1860 Judge Green published a work on the Practice in the Circuit Courts, and has recently published "Green's New Practice," in two volumes. He is also the author of a work on Townships, and the Powers and Duties of Township Officers.

GRIDLEY, G. THOMPSON.—Of Jackson, was born in the town of Vernon, Oneida county, state of New York, July 1st, 1816. After receiving a fair academic education, he entered the law office of the late Hon. Timothy Jenkins, at Oneida, New York, at the early age of sixteen years, with whom he pursued his studies for about two years, when he became a student with his uncle the late Philo Gridley, then living at Hamilton, Madison county, New York, but who subsequently removed to Utica, where he was elected one of the judges of the Supreme Court of the fifth circuit of that state. After remaining in the office of his uncle for about three years, and upon obtaining his majority in 1837, he removed to Michigan and settled at Ypsilanti, and as soon as he had resided a sufficient time in the State, he was admitted to the practice of his profession, by the Supreme Court sitting at Ann Arbor. He remained at Ypsilanti seven years, when he removed to Jackson in the spring of 1844, where he has resided ever since in the continuous practice of the law, until he became judge of this circuit, to which he was elected in 1881 by a plurity of nearly 1,500 votes. In 1845 he was appointed Prosecuting Attorney of Jackson county, to fill a vacancy, and also for the then next succeeding term of that office, In 1848 he was appointed by the judges of the old Supreme court, Injunction Master for the then third judicial circuit, composed of six or seven of the central and southern counties of the state, which office was abrogated by the constitution of 1850. In the fall of 1850 he was elected County Judge, but served as such only one year because of the provisions of the new constitution. In March, 1867, he was appointed Assessor of the Internal Revenue for the third Congressional district of Michigan, and served therein until May, 1873, when the duties of the office were devolved upon the Collector of

the Revenue. He has also served for the period of twelve years, by successive annual elections—from 1850 to 1862—as director of the Union School District, No. 1, of the city of Jackson. He regards this position as one of the most important he has ever filled, and contemplates with much satisfaction the share he has thus had in maintaining and popularizing the superior common school system, so justly fostered and prized by the people of the State.

GRIER, THEOPHILUS COTTON.—Judge of the Eighteenth Circuit from 1870 to the time of his death, in 1872, was born January 2, 1834. His parents resided at Revenna, Ohio, during his early childhood, but they both died when he was quite young. He then resided with an uncle for some time. . He was a descendant on his mother's side from the Rev. John Cotton, of Boston, and of Pilgrim fame. At fifteen he was apprenticed to Joel B. Brattles, editor of the *Trumbull County Democrat*, Ohio. Studied law in the office of Riddle & Hathaway, Chardon, Ohio, in 1854. In 1857 he married the lady who was his faithful companion till the day of his death. Shortly after he was admitted to the bar and removed to Pine Run, Mich., where he commenced the practice of law in the same year. In 1859 he removed to Bay City. At that time he was in very destitute circumstances, but with that courage and ability he possessed he soon secured a good practice, and continued to increase it until it became quite lucrative. Judge Grier was frequently elected to offices of trust and honor. In 1860, prosecuting attorney and Circuit Court Commissioner for the county; in 1865 was city attorney; in 1867 was representative to the Legislature. While filling this office he distinguished himself both as debater and good working member. In 1870, by unanimous request of his legal brethren of the Bay City bar, and without opposition, he was chosen Judge of the eighteenth Judicial Circuit, holding the office till his death, June 5, 1872. (We are indebted to H. R. Page's "History of Bay County" for these facts in the life of Judge Grier.)

HAIGHT, SAMUEL D.—Was born November 16th, 1839, in the town of Root, Montgomery County, New York. He worked on his father's farm in the summer and attended district school in the winter till seventeen years of age; afterwards teaching in winter till twenty years of age, —in the meantime attending one term at Fairfield University. He came to Michigan in 1861, and taught in Jackson County till January, 1862, when he enlisted in Company A., Ninth Michigan Cavalry He was

promoted from the ranks to first sergeant, second and first lieutenant. He was in fifty-two engagements; was with Sherman in the Atlantic campaign and "marched to the sea," and was mustered out July 5th, 1865. He returned to Michigan and resumed teaching and studied law, He was admitted to the bar in 1870 and settled in Ludington. The same fall he was elected Prosecuting Attorney on the Democratic Ticket —the county being largely Republican, and was re-elected in 1872 by an increased majority. He relinquished a large practice when elected Circuit Judge in 1878.

HARBAUGH, DAVID E.—Was a Recorder of Detroit for one term under the old law when it had jurisdiction similar to that of a "Mayor's Court." He was Prosecuting Attorney of Wayne county for one term; one of the U. S. Officers having charge of the draft at Detroit in 1863–4; was for several years after the war Collector of Internal Revenue for the first Michigan District. From 1873 to 1878 he was Police Justice, and, as in other positions, he was competent and faithful in the discharge of his duties. He was once well to do, but met with reverses during the years of panic. During the last years of his life his intellect was clouded. He died in the spring of 1884.

HARRIS, EDWARD W.—Was born May 4th, 1831, at Bradford, Orange County, Vermont. In 1837 he came to Michigan with his parents, who settled in Rochester, Oakland County. In due time he attended the academy at that place for several years. In 1854 he graduated at the State and National Law School at Poughkeepsie, N. Y., and in December of that year located at Port Huron. In 1855 he formed a law copartnership with the Hon. O. D. Conger, under the firm name of Conger & Harris. In 1862 he was appointed Judge of Probate of St. Clair County, in place of Major Scarritt, resigned; and served as such for three years. In 1866 he was elected Prosecuting Attorney, and served two years. In 1868 he was elected Judge of Probate, and served four years. In 1873 he was appointed Judge of the Sixteenth Circuit, in place of Judge Mitchell, resigned, and in 1875 was elected to the same place without opposition. He is now engaged in the successful practice of his profession at Port Huron.

HART, HENRY.—Was born May 13th, 1840, in China, Michigan. He was raised on a farm and received a common school education. He graduated from the Law Department of the University 1865, and com-

menced practice at Midland the same year, where he has since resided. He was Justice of the Peace one year, Prosecuting Attorney of Midland four years, Circuit Court Commissioner four years, Supervisor three years, a member of the Midland School Board five years, and Representative in the Legislature in 1875, and in that year he was elected Judge of the 21st Judicial Circuit, and is still Circuit Judge.

HATCH, REUBEN.—Was born October 11th, 1847, at Halstead, N. H. When about four years of age his parents moved to Ohio, and subsequently to Michigan. He was admitted to the bar in 1869, and practiced his profession till 1874, when he was elected Circuit Judge, his district embracing eight counties.

HAWES, JOSIAH L.—Was born in Carlisle, N. Y., October 12th, 1823. His early education was mainly in the common schools. He commenced the study of law in 1843, and was admitted to the bar in 1847. He practiced law in Unadilla two years; then at Cobleskill, N. Y., till 1852, when he removed to Kalamazoo, Michigan, where he distinguished himself chiefly as trial counsel in cases at the Circuit. In April, 1875, he was elected Circuit Judge, his term to commence in January following; but a vacancy in the office having occurred, he entered at once upon the office by appointment from Governor Bagley. He is a conservative, old line Democrat, and eminently a self-made man.

HOOKER, FRANK A.—Was born at Hartford, Connecticut, January 16, 1844. In 1856 he removed with his parents to Maumee City, Ohio, and continued there and at Defiance till he entered the law department of Michigan University, from which he graduated in 1865, and was admitted to the bar. He practiced law at Bryan, Ohio, one year, and in 1866 removed to Charlotte, Michigan, where he has since resided. In 1867 he was elected Superintendent of Schools for Eaton County. In 1872 he was elected Prosecuting Attorney for that County, and re-elected in 1874. After his second term of that office expired he continued in the practice of law till 1876, when, upon the resignation of Circuit Judge Van Zile, he was appointed by Governor Croswell to fill the vacancy. In the fall of 1878 he was elected to fill out the term of six years. He has filled various offices of a municipal and local character. The editor of *Nisi Prius* was a classmate of Judge Hooker at Ann Arbor. He recalls him as a close student, and as giving promise of a successful career at the bar.

HOWARD, SUMNER.—Was born in Massachusetts in 1835. Studied law with Gov. Wm. M. Fenton at Flint. Was admitted to the bar and elected Prosecuting Attorney of Genesee County the year he reached his majority. Was a member of the Constitutional Convention of 1867. Was Sergeant in the Flint Union Greys, 2d Michigan Infantry, in early part of war; was soon after appointed a Lieutenant in the Regular Army. After retiring from the service he resumed the practice of law at Flint. He was appointed by President Grant United States District Attorney for Utah, and was very efficient in prosecuting offenders against the law, convicting some of the infamous characters engaged in the Mountain Meadow massacre. In 1882 he was elected to the Michigan Legislature and was elected Speaker in January, 1883. He was some months ago appointed Chief Justice of Arizona, and has entered upon the duties of his office. Judge Howard is especially strong as a criminal lawyer.

HOLMES, JOHN T.—Of Grand Rapids, was the first Judge of the Superior Court of Grand Rapids. This Municipal Court was authorized by the Act of March 24, 1875. (2 How. Stat. Sec. 6564.) It is a court of civil jurisdiction of certain matters named in the Act. The jurisdiction previously conferred on the Recorder's Court of Grand Rapids was transferred to the Superior Court by said Act. The jurisdiction covers a broader field than that of the Superior Court of Detroit, which has no criminal jurisdiction. Judge Holmes was elected in April 1875. On retiring, he was elected Judge of the Police Court of Grand Rapids, which office he now holds. We are unable just as we need it to obtain further information as to the life of Judge Holmes.

HOWELL, ANDREW.—Of Adrian, Judge of the first judicial circuit, was born at Covert, Seneca county, New York, December 18, 1828. His father, Joseph Howell, a member of the first constitutional convention of this state, removed to Lenawee county, in 1831, where the earlier years of Judge Howell were spent. He commenced the study of law with the late Hon. F. C. Beaman, at Adrian, in 1850, and graduated at the law school of the Cincinnati college in 1853, taking the first honors of his class. He was admitted to the bar at Adrian in 1854, and practiced law there at first with Judge Beaman, and afterwards for several years with the late Hon. R. R. Beecher. He was elected circuit court commissioner of Lenawee county in 1858, and for two terms thereafter. Was a member of the State Senate in 1865, and again in 1867. He has edited and published several editions of the Justice's Guide, and of

Tiffany's Criminal Law, and is the author of a compilation of the general laws of the State, known as Howell's Annotated Statutes of Michigan. He was elected Circuit Judge in 1881, entering upon the duties of his office on the first of January, 1883. His notes to Howell's Statutes are highly prized by the bench and bar, and show a degree of care, study and research surprising when we realize that he was actively engaged in the duties of his office of Circuit Judge.

HUNTINGTON, GEORGE M.—Was born at Ludlowville, New York, March 20, 1836. In 1838 his father removed to Michigan, and settled at Aurelius, Ingham County. At the age of 14 George went to Rockford, Illinois, to live with an uncle, who was a teacher. He remained with him four years, and received an academic education. In 1855 he commenced the reading of law, in connection with other studies, under the tuition of Hon. O. M. Barnes, at Mason. In 1857 he was admitted to the bar, and formed a co-partnership with Mr. Barnes, which continued until the latter retired from practice, in 1866. After this he was for a time associated with J. Barnes Root, and later, until his election to the bench, with H. P. Henderson. He continued in the active practice of his profession from the age of twenty-one, when he was admitted to the bar, to 1876, when he entered upon the duties of Circuit Judge. He held the office of Prosecuting Attorney for Ingham County in 1863 and 1864. He was elected State Senator for Clinton and Ingham Counties in 1874, and during the session of 1875 was elected Circuit Judge, and resigned the office of Senator.

HOYT, BIRNEY.—Was born October 13, 1841, at Sinclairville, Chautauqua county, New York. In 1845 his parents removed to Farmington, Oakland county, in this State, and in 1852 from thence to Detroit, and in 1857 from thence to Grand Rapids. Attended the public schools. In 1862, at the age of 20 years, enlisted in Company A, 6th Michigan Cavalry, and served to the end of the war as Sergeant and First Lieutenant. Participated in the Gettysburgh campaign and upon the Appomattox river in the spring of 1865; was twice wounded; once severely in the left shoulder. Once a prisoner of war in Libby Prison, Richmond. Attended law school at Ann Arbor winter of 1865–'66, and admitted to the bar in 1866. Practiced law in Grand Rapids up to the spring of 1871, having held the office of City Recorder of Grand Rapids for four years, from 1867 to 1871. At the spring election in 1871 was elected to fill vacancy on the creation of the Seventeenth Judicial Circuit, and in 1875 was re-elected for the full term.

JENNISON, WILLIAM.—Of Detroit, one of the Circuit Judges of the Third Judicial Circuit was born in Boston, Massachusetts, December 10, 1826. He received a thorough business and classical education; graduated at Harvard law school, Cambridge, in 1851; came to Detroit in 1852, and entered the law office of A. D. Fraser; opened an office in 1853; was appointed Assistant United States District Attorney in 1869; January 1st, 1882, was appointed by the Governor as one of the Judges of the Third Judicial Circuit to fill vacancy, and was elected November 7, 1882, for the remainder of the term. He was State Reporter for some time, and is the author of a standard chancery work, "Jennison's Chancery Practice."

JOHNSON, FRANKLIN.—Born in Vermont; received a legal education, and became a resident of Monroe, Michigan, in 1835, where he spent the remainder of his life. While also actively engaged in practicing law, he found time to fill many public stations; among them, Attorney for the City of Monroe, Prosecuting Attorney of Monroe County and Judge of Probate. Also Judge of the Circuit Court for the First District of Michigan for six years. He was an able lawyer and judge. It is said that His decisions were seldom reversed by the Supreme Court. He died at Monroe, October 11, 1870.

JOSLYN, CHAUNCEY.—Of Ypsilanti, was born at Throopsville, Cayuga county, N. Y., June 28, 1813. Educated at Temple Hill, Livingston county. After leaving school he engaged in teaching for five years, when he began the study of law. In 1837 he removed to Ypsilanti. He was elected a representative to the State Legislature in 1843. Appointed a member of the State Board of Education in 1851, and Judge of Probate, Washtenaw county, 1852. In 1853 he was appointed one of the commissioners to construct the St. Mary's Falls ship canal. Was Mayor of Ypsilanti in 1858. Mr. Joslyn was elected Judge of the Twenty-second Judicial Circuit in April, 1881, on the Democratic ticket.

JUDKINS, J. BYRON.—Of Hersey, was born at Coldwater, Mercer county, Ohio, January 18, 1851; was educated at the Celina Union School and Liber College, Indiana; moved to Michigan in 1870; studied law with Murdock & Nottingham, at Big Rapids, for three and a half years; was admitted to the bar in January, 1874; settled at Hersey, Osceola county, September, 1875; was appointed Judge of the Nineteenth Judicial Circuit in March, 1880, to fill the vacancy caused by the death

of Hon. Samuel D. Haight, and was elected without opposition for the unexpired term in November, 1880. In the spring of 1881 he was re-elected, without opposition, to the same office for the full term.

JOY, JAMES F.—Was born at Durham, N. H., December 2, 1810. Graduated at Dartmouth College in 1833, with the honors of his class. Attended Cambridge Law School; was a tutor at Dartmouth; in 1836 Mr. Joy came to Detroit and entered the law office of Hon. Angustus S. Porter. Admitted to the bar in 1837, and at once entered upon a lucrative practice. He soon became the partner of George F. Porter. Joy and Porter was a firm widely known, and enjoyed a large practice. In 1847 he negotiated for eastern parties the purchase from the State of the Detroit and St. Joseph Railroad. This was the beginning of a famous and honorable career as a railroad organizer. President, etc., of the Michigan Central and many other important railways. In —— he was Judge of the Recorder's Court of Detroit. In 1862 he was elected representative in the Legislature. In 1861 he was mentioned in connection with a place on the Federal Supreme bench. In the Republican convention of 1880 he made the leading speech in nominating James G. Blaine for President. Mr. Joy is apparently as hale and vigorous as in his prime. He would do honor to any position in the gift of the American people.

KEARSLEY, JONATHAN.—Was born in Virginia in 1786, and died in Detroit, Michigan, in 1859. Graduated at Washington College in 1811. In 1812 he was appointed 1st Lieutenant of the 2d Artillery Corps. During the war he was Assistant Adjutant General, Captain and Major. He was engaged in several battles and lost a limb in the sortie from Fort Erie. In 1817 he was appointed Receiver of Taxes in Virginia; in 1819 he was appointed Receiver of the United States Land Office at Detroit, and held the office for 30 years. Was Mayor of Detroit; Regent of the University of Michigan; also Judge of the Recorder's Court.

KEIGHTLY, EDWIN W.—Was born in La Grange County, Indiana, August 7, 1843. Attended the common school and the Valpariso College Institute. Graduated from Law Department of Michigan University in 1865, and at once commenced practice in St. Joseph County, Michigan. Elected Prosecuting Attorney in 1872. Appointed Judge of the 15th Circuit, and in 1875 was elected to a term of six years, commencing May 1, 1876. Was elected to the 45th Congress as a Republican. Since

his term expired he has held the office of Third Auditor of the Treasury. We recall that in the University he was an eloquent and clear debater and more than one predicted that he would at some time go to Congress.

LITTLEJOHN, FLAVIUS J.—Was born in Herkimer County, New York, in 1804. Graduated at Hamilton College in 1827, delivering the valedictory address. Admitted to the bar in 1830. Practiced at Little Falls till 1836, when, his health failing, he removed to Allegan County, Michigan, and for several years was a surveyor, engineer and geologist. Was representative in Legislature in 1842, 1843, 1848 and 1855. In State Senate and President *pro tem.* in 1846. Returned to practice, and in 1858 was elected Judge of the Allegan Circuit, embracing all lake shore counties from Allegan to Emmett County, continuing on the bench till January 1, 1870, and was succeeded by Charles R. Brown.

LONGYEAR, JOHN W.—He was born in Shandaken, Ulster Co., N. Y., October 22, 1820; received a good academic education; removed to Michigan in 1844; studied law, and came to the bar in 1846; and was elected a Representative from Michigan to the Thirty-Eighth Congress, serving on the Committee on Commerce, and as Chairman of the Committee on Expenditures on the Public Buildings. Re-elected to the Thirty-Ninth Congress, serving on the same committees; he was also a Delegate to the Philadelphia "Loyalist's Convention" of 1866. In 1870 he was appointed by General Grant, United States Judge for the Eastern District of Michigan, which office he held till his death in 1875.

LOTHROP, GEORGE V. N.—Was born at Easton, Rristol county, Mass., August 8, 1817. His early years were spent upon a farm. In 1838 was graduated from Brown University. In the fall of 1838 he entered the law school of Harvard College. In the summer of 1839, being in ill health, he came to Michigan, and for three years was with his brother, Hon. Edwin H. Lothrop, on the latter's large and beautiful farm at Prairie Ronde. In 1843 he resumed the study of law in the office of Joy & Porter, at Detroit. He argued one important case (his first in a court of record) while yet a student, before the Supreme Court, that of the State Bank v. Hastings et al. (1 Douglas, 225.) In the spring of 1844 he commenced practice at Detroit, as a partner of D. Bethune Duffield. The firm of Lothrop & Duffield continued till 1856. In April, 1848, he was appointed Attorney General, and held the office till 1851. In he was elected Recorder of the city of Detroit. He was a member of

the Constitutional Convention of 1867. Declined appointment on the Constitutional Commission of 1873. He has several times been the democratic candidate for Congress, also for United States Senator. Mr. Lothrop possesses talents of the highest order; as an orator is the peer of any man in the State, if not superior to any other; as a lawyer he is industrious, studious, profound in his knowledge of the law, and is clear in its presentation; he is the soul of honor, scorning any trick or unworthy device; is courteous to everybody, in fact is a perfect gentleman. He is by common consent accorded the place of leader of the bar of Michigan.

LOVELL, LOUIS S.—Of Ionia, was born in Grafton, Windham county, Vermont, November 15, 1816; after due preparation he entered Middlebury College, where he graduated in 1832; and then he went south and taught school until 1828. He then read law in Springfield, Vermont, and also in New York City, and removed to the west in 1841, locating himself at Ionia, Michigan. He was admitted to the bar in 1842; and in 1849 he was appointed by President Taylor Register of the General Land Office at Ionia, which he held until the accession of President Pierce. In 1857 he was elected Circuit Judge of the Eighth Judicial Circuit of Michigan for six years; re-elected in 1863 for a second term; and in 1869 was re-elected for a third term without opposition. He is Vice-President of the First National Bank of Ionia, where he resides.

MCLEAN, JOHN.—As his judicial power extended over the State of Michigan from the time it was admitted into the Union until his death, it is entirely proper that his services should be recorded in this volume. He was born in Morris county, New Jersey, in 1785. Four years after his birth his father emigrated with his family to Virginia, whence he removed to Kentucky, and finally settled in Ohio. Here the son received a scanty education, and having determined to study law he engaged at the age of eighteen to write in the clerk's office at Cincinnati, in order to maintain himself, by devoting a portion of his time to that labor while engaged in his studies. In 1807 he was admitted to the bar, and entered upon the practice of the law at Lebanon, Ohio. In 1812 he became a candidate to represent his district in Congress, and was elected by a large majority as a Democrat. In 1814 he was again elected to Congress by a unanimous vote—a circumstance of rare occurrence—and remained a member of the House of Representatives until 1816, when, the Legislature of Ohio having elected him a Judge of the Supreme Court of

the State, he resigned his seat in Congress at the close of the session. He remained six years upon the Supreme Bench of Ohio. In 1822 he was appointed Commissioner of the General Land Office by President Monroe; and in 1823 he became Postmaster-General. In the year 1829 he was appointed by President Jackson a Justice of the United States Supreme Court, after he had refused the offer of the War and Navy Department. He entered upon the discharge of his judicial duties at the January term of 1830, and died in Cincinnati April 4, 1861. He was the favorite of many Republicans for President in 1856 and 1860, but younger men carried off the nomination.

MARSTON, ISAAC.—Was born at Poyntzpass, County Armagh, Ireland, January 2, 1839, his father, Thomas Marston, being a small landed proprietor, of English descent, and his mother a prudent and capable woman, who, after her husband's death, maintained and educated her children. She apprenticed her son at the age of thirteen to a grocer, with whom he remained three years. In 1856 he emigrated to the United States, and went to work upon a farm in Southfield, Oakland County, Michigan, attending school two months. In 1859 he entered the law department of the University of Michigan, and graduated in 1861. He practiced law for six months at Alma, Gratiot County, where he lost his office and library by fire. He then practiced for a little while at Ithaca, and in 1862 removed to Bay City, where he lives. He there became Justice of the Peace, Prosecuting Attorney and City Attorney. In 1872 he was sent as a representative to the State Legislature for the extra session of that year. In 1874, by appointment of Governor Bagley, he became Attorney-General, succeeding Byron D. Ball, who had resigned. During his nine months incumbency that office transacted more business than it ever did before or since in a similar period. In April, 1875, he was elected to fill the vacancy in the Supreme Court, left by the election of Judge Christiancy to the United States Senate, and received the unprecedented party vote of 117,951 to 91,876 for Lyman D. Norris (Dem.) He was baptized into the Church of England, but attended the Presbyterian Church. He has always been a Republican, and as such led a bolt from the Congressional convention held by that party in 1870 in his district. He resigned his place on the bench in the early part of 1883, since which he has been engaged in the practice of law at Detroit. He is still a young man, and bids fair to greatly increase his already enviable reputation at the bar.

MARTIN, GEORGE.—He was born in Middlebury, Vermont, in 1825; acquired a good education, and having adopted the profession of law, removed to Michigan and settled at Grand Rapids. After holding a number of local positions of honor and trust, he was elected a judge of the Supreme Court of the State, and was Chief Justice from 1858 to 1867. He died in Detroit, December 15, 1867.

MAY, JAMES.—Was a native of England and settled in Detroit in 1778. He was for many years honorably identified with the early history of Michigan. He was a Colonel of Militia; was appointed Chief Justice of the Court of Common Pleas about the year 1800 and held the office for seven years. He died in January, 1829. A good portrait of him may be found in the "Early History of Michigan," by E. M. Sheldon. When the American Flag was hauled down, by order of Hull when he surrendered Detroit, Colonel May got possession of the flag, and keeping it in a safe place until the arrival of General Harrison, he hoisted it again to the breeze. An account which was published from his pen, respecting the condition of Detroit in 1778, is a document of very great interest and value.

MEIGS, RETURN J.—Was born in Middletown, Connecticut, in 1765; graduated at Yale College and adopted the profession of law, which he began to practice in his native town. In 1802 he was chosen Chief Justice of the Supreme Court of Connecticut; in 1804 President Jefferson appointed him commandant of United States troops and militia in Upper Louisiana, and soon afterwards he became one of the Judges of that Territory. In 1807 he was commissioned a Judge in the Territory of Michigan, which he resigned in 1810, and was elected Governor of Ohio, which election was declared invalid, as he had not resided the required time in the new State. He was at once chosen a Senator in Congress, where he served from 1808 to 1810; and he was Governor of Ohio from 1810 until 1814, and by his co-operation with General Harrison, did much to help the American cause in Michigan against the operations of the British. In 1814 he was appointed to take charge of the General Post Office Department in Washington, where he remained until 1823, and in which position his services were important. He died at Marietta, Ohio, March 29, 1825. His singular name is accounted for as follows: When his mother was a girl, and had discarded her lover, Jonathan Meigs, she suddenly repented her conduct, and running to the door called out,

"Return Jonathan! Return Jonathan!" He did return, and they were married, and their first child they thought proper to identify with this domestic joke.

MILLS, ALFRED J.—Of Paw Paw, was born of English parentage in 1851. He was admitted to the bar in 1873 at Kalamazoo. In 1875 he removed to Paw Paw, where he has since resided. He was elected Judge of Probate of Van Buren County in 1876, and Circuit Judge in the spring of 1881.

MITCHELL, WILLIAM T.—Was born May 27, 1817, at Middlebury, Genessee (now Wyoming) county, N.Y., then almost a wilderness. His father, Hon. William Mitchell, was for many years first Judge of the Genessee County Court of Common Pleas. Had a good common school education and a fair classical education—so he could have entered the junior college year. Read law at Attica for three years with Hon. Harvey Putnam and Judge James G. Hoyt, and for awhile in the office of Gen. Martindale, at Batavia. Hon. James O. Putnam, of Buffalo, was his fellow student in the academy and his father's office. Admitted to the bar in New York State in October, 1839. Removing to Lapeer, Michigan, he was admitted to the bar at Pontiac November 12, 1839, after a rigid examination before a committee composed of Gov. O. D. Richardson, Hon. Wm. Draper and Henry C. Knight. Was married October, 1839, to Adeline A. Peck, of Attica, N. Y. In 1840 edited the Lapeer *Plaindealer*. Appointed Prosecuting Attorney of Lapeer county in February, 1840, and elected Register of Deeds that fall. In July, 1841, malarial sickness led Judge M. to return to New York, where he practiced law. In August, 1842, removed to Romeo, Michigan. Was Prosecuting Attorney of Macomb County and Master in Chancery. Removed to Port Huron September 1, 1847, where he has since resided. Was elected to the Legislature in 1852. Built up a large business. Elected Circuit Judge in 1869. Held the office three years, and, the circuit being large and salary small, he resigned and resumed the practice of law. He is successful, but finds out an old fact, that a business once broken up by an office never returns, and that it is far easier for a young than an old man to compel success.

MONTGOMERY, ROBERT M.—Of Grand Rapids, was born at Eaton Rapids, Mich., May 12, 1849, and attended the public school there until he was eighteen years of age. He was admitted to the bar at the age of

twenty-one years and began the practice of his profession at Pentwater, where he remained until 1877, when he removed to Grand Rapids, where he has since resided. During his residence at Pentwater he was for four years Prosecuting Attorney of Oceana county. Upon removing to Grand Rapids he was appointed Assistant United States Attorney, and held that office until October, 1881. He was elected Circuit Judge of the 17th Judicial Circuit at the April election of 1881, as a Republican, and has filled the position since January 1, 1882.

MOORE, JOHN.—Was born in London, England, July 7, 1826. When four years old he removed with his family to the State of New York; four years later came to Milford, Oakland County, and resided on a farm till 1846, when he commenced the study of law with Hon. A. C. Baldwin, now of Pontiac. In 1848 he entered the law office of Lothrop and Duffield, Detroit. In October of that year he was admitted an Attorney of the Supreme Court at a session held at Pontiac, and soon after opened an office at Fentonville, where he remained in practice till 1851, when he removed to Saginaw, where he has ever since resided. Was Prosecuting Attorney of Saginaw county from 1855 to 1858 inclusive; mayor of Saginaw City during 1862-3; member of Board of Education for many years; Democratic candidate for Governor in 1868. In February, 1871, appointed Judge of the Tenth Circuit, vice Sutherland, resigned, and in 1871 was elected to that office without opposition.

MORELL, GEORGE.—For biography see p. 284. See also Judge Campbell's interesting reminiscences in the introduction to 43 Michigan reports.

MORRIS, GOUVERNEUR.—Of Monroe, is a native of Vermont, which State his father represented for six years in Congress. His great uncle and namesake, Gouverneur Morris, was one of the financiers for the Continental Congress during the revolutionary struggle. The Judge graduated at Dartmouth College and in the law department of Yale College. He devoted several years to travelling after completing his education. He was for a year in the law office of the late Chief Justice Chase at Cincinnati, Ohio; was admitted to the bar in Kentucky, soon thereafter returning to his native State, where he practiced his profession for a while and engaged in manufacturing. He came to Michigan in 1840 and was engaged in farming for fifteen years. In 1855 he resumed the law business and opened an office at Monroe, holding the offices of

county treasurer and Judge of Probate for one term respectively. Mr. Morris has always been an uncompromising Democrat in his politics, and in 1878 was by that party chosen as Circuit Judge over his two opponents, viz., Col. Ira R. Grosvenor (Rep.), and Robert A. Fraser, (G.B.)

NEWTON, WILLIAM.—Of Flint, Michigan, now fifty-five years of age, is a native of Maryland. He came to Michigan in 1848; studied law with Messrs. Lothrop and Duffield, of Detroit. After being admitted to the bar he removed to Flint in 1853, where he has since resided, with the exception of three years in San Francisco, Cal. He has been prosperous and successful while at the bar. Was elected Judge of the Seventh Circuit in the spring of 1881, by a majority of 1,321. He is also engaged in farming, having a farm of 240 acres which he cleared from the stump.

PARRISH, ISAAC H.—Judge of the Superior Court of Grand Rapids, was born April 3d, 1826, in Ontario County, New York. When about eight years old he removed with his parents to the town of Farmington, Oakland county, Michigan, and settled on a wild, uncultivated farm near what was then known as the Baptist Settlement, about twenty miles west of Detroit. He attended school in the neighborhood when any was held, and worked on his father's farm. He graduated from this combined school of mind and muscle at the age of nineteen. He then left the farm because of ill health, and for about two years was clerk in John T. Little's store, then kept in a little place near Farmington village, called Pernambues. In 1847 he entered the law office of Green and Stevens (Judge Sanford, M. Green and Hon. Hestor L. Stevens, the latter subsequently representing the Oakland District in Congress) as a student. He was admitted to the bar before the Supreme Court then sitting at Detroit, on the 4th day of March, 1848. Charles W. Whipple was then Chief Justice. In 1851 Judge Parrish formed a law partnership with Hon. Michael E. Crofoot, at Pontiac, which continued to 1854, when he took up his residence at Manitowoc, Wisconsin, and there engaged in the practice of the law. He was soon after appointed County Judge to fill a vacancy, by Alexander Randall, then Governor of Wisconsin. In 1858-9 Judge Parrish practiced law in Milwaukie. In 1861 he came to Grand Rapids, Michigan, and was soon after appointed Clerk of the United States District Court for the Western District of Michigan, then newly organized; also Clerk of the United States Circuit Court, and held the office for twelve years, when he resigned and again resumed the practice of the law, in which he was very successful. In 1881 he was

elected Judge of the Superior Court of Grand Rapids by a very flattering vote, and has since then administered justice as Judge of that court with marked success, and to the general satisfaction. Judge Parrish was married in 1855 to a sister of Gen. E. Fox Cook, who was once well known in Detroit, and who was a member of the first constitutional convention of this state. Gen. Cook is now a helpless cripple. Judge Parrish has a very interesting family of five children—four girls and a boy, the latter the youngest and now sixteen years old.

PATCHIN, JARED.—Was graduated from the State University in 1853; admitted to the bar 1858; deputy county clerk Wayne County 1854 63; county clerk 1863-4; prosecuting attorney 1865 6; Judge of Wayne Circuit 1867-1875; removed to Florida in 1876, and was elected to Florida Legislature in 1878. Returned to Detroit in 1881, and since then has been engaged in the practice of law. Defeated for Judge of Wayne Circuit in 1882. He presided as judge over the famous Ward will case.

PEALER, RUSSELL R.—Of Three Rivers, was born at Greenwood, Columbia County, Pennsylvania, January 1, 1842; reared on a farm; educated at common school, the New Columbus Normal School, and the Orangeville Academy in Pennsylvania, teaching school at intervals to obtain means to pursue his studies. He served his country as a volunteer during the late war; enlisted in the 16th Pennsylvania Cavalry, September 9, 1862. He was promoted through the several grades from private to first lieutenant of his company. He was wounded in action while in command of a battalion at the battle of Hatcher's Run, Virginia, February 6, 1865. Studied law with Robert F. Clark, at Bloomsburg, Pennsylvania; admitted to the bar September, 3, 1867. He removed to Three Rivers, November 12, 1867, where he has since resided, engaging in the practice of his profession. Has held various municipal and local offices; twice elected Circuit Court Commissioner, serving as such three years, when he resigned to accept the appointment of Prosecuting Attorney, which office he held three years, then declined a re nomination; Chairman St. Joseph County Republican Committee, 1880–81. In April, 1881, he was elected Judge of the Fifteenth Judicial Circuit for the full term, and left a lucrative practice to enter upon the discharge of the duties of the office, January 1, 1882.

PHELPS, WILLIAM W.—Was born in Oakland county, Michigan, June 1, 1826. He graduated at the University of Michigan in 1846; studied

law, and was admitted to the bar in 1848; and edited *The Jacksonian*, a Democratic newspaper in Oakland county, from 1851 to 1855. In 1852-3 he held the office of Circuit Court Commissioner for Oakland county. In 1854 he was appointed by President Pierce Register of the United States Land Office at Red Wing, in Minnesota; and in 1857 he was elected a representative to the thirty-fifth Congress, from that State, and was a member of the committee on mileage. In 1860 he assumed the editorship of the *Red Wing Sentinel*. Held the office of District Judge (corresponding to that of Circuit Judge in this State), in Minnesota. He died at Grand Haven, Michigan, in 1873, while sojourning there for the benefit of his health. How uncertain is life. In 1872 Judge Phelps took an active part in the Presidential campaign, and appeared robust and vigorous. After the election in November of that year the writer heard him say that thereafter he intended to train with the young Democracy. But before another campaign was reached he had sought the land of eternal youth.

PORTER, AUGUSTUS S.—Was born at Canandaigua, N. Y., January 18, 1798; graduated at Union College in 1818. Practiced law in Detroit from 1828 to 1848. Mayor of Detroit in 1838. United States Senator from Michigan 1840-5. Was Judge of the Recorder's Court, Detroit, in 1830. Removed to Niagara Falls, his father's residence, in 1848, where he lived in retirement, but came again into public life sufficiently to attend the "National Union Convention" of 1866.

PRATT, ABNER.—Was born in Otsego county, N. Y., March 22, 1802. Attended District school; read law at Batavia; commenced practice at Rush, Monroe county, New York; removed to Rochester and resided there till 1839, when he resigned the office of District Attorney, which he held, and removed to Marshall, Michigan. Was State Senator in 1844-5, and in the Lower House in 1863. In 1858 was appointed Consul at Honolulu. Was Justice of the Supreme Court, vice Miles, deceased, and was Circuit Judge and *ex-officio* Supreme Judge under the Constitution of 1850 till 1857, when he resigned. He was twice married. He was a prominent Democrat. Died March 27, 1862.

PRATT, DANIEL L.—Was born in Plainfield, Mass., June 24th, 1820. In 1830 the family removed to Geauga county, Ohio. He studied law with John T. Brazee, Lancaster, Ohio, and was admitted to the bar in 1844. In 1845 he removed to Hillsdale and commenced the practice of

law, where he has since resided. He was elected Prosecuting Attorney for Hillsdale county in 1856, and again in 1860. He was on the Board of Trustees of the Michigan Asylum for the Insane twelve years. He was a member of the Constitutional Convention in 1867. In 1868 he was elected, as the Republican candidate, Circuit Judge of the First Judicial Circuit. Having served six years he was re-elected in 1875 without opposition, no nomination being made against him. He has been a trustee of Hillsdale College since its organization in 1853, and has contributed liberally in time, money and counsel for its support. He was a Whig until the formation of the Republican party, with which he has since acted. He is a member of the Presbyterian church. He resides upon a farm which he has cleared up and improved, just out of the city of Hillsdale.

RAMSDELL, JONATHAN G.—of Traverse City, was born in Plymouth, Wayne county, Michigan, in 1830. Educated at Plymouth Seminary and Albion College. Studied law in the office of Judge Longyear, at Lansing; was admitted to the bar in 1857. Removed to Grand Traverse in 1860. On the formation of the Thirteenth Judicial Circuit was elected its Judge; held the office two terms and declined a re-nomination for the third term on account of small salary and expense of circuit. In 1878 was chosen Solicitor for the Regents of the State University in the Rose-Douglass suit, in place of Judge Christiancy and Hon. William L. Webber, who had withdrawn from the case. Mr. Ramsdell was again elected Judge of the thirteenth Judicial Circuit in 1881. He lives upon and operates a fruit farm adjoining the village of Grand Traverse.

RANSOM, EPAPHRODITUS.—Was born in Hampshire county, Massachusetts, in 1806, and received a liberal education, and was admitted to the bar of that State. He came to Michigan while it was yet a territory, and took up his residence in Kalamazoo. At one time he was possessed of large property in that beautiful town, which has since become of very great value. When the first Supreme Court of the State was organized William A. Fletcher was made Chief Justice and George Morell and Mr. Ransom were appointed Associate Justices. The revised statutes of 1838, as prepared by Chief Justice Fletcher and adopted by the Legislature, declared that the Supreme Court should consist of one Chief Justice and three Associate Justices. Through this change in the judiciary Judge Ransom had three associates upon the bench—Charles W. Whipple, Alpheus Felch and Daniel Goodwin. On March 19, 1843, he wa.

appointed Chief Justice. In 1847 he was elected Governor, and assumed the duties of that office in January, 1848. He served until the expiration of his term. His private affairs had become involved, and he removed to Kansas and there acted as receiver of the Land Office of the United States for one of the districts. He died at Fort Scott, Kansas, November 9th, 1859. His administration of the government was very satisfactory. Much of the legislation during his term was directed to the affairs of the Upper Peninsula, and to the construction of the canal around the falls of the St. Mary's river. It is, however, upon his services as a Judge that his reputation principally rests. As such he exhibited a very high order of ability,—much more, we think, than is generally attributed to him by public estimation. The decisions of the Supreme Court, reported in First and Second Douglass, show that more important decisions were delivered by him than by any other one Judge embracing subjects of practice and pleading, constitutional and commercial law, of the relations between the Territory and the State, the law of real estate and other subjects. We refer particularly to his decisions in the opinions delivered by him, as reported in First Douglass, Fitch vs. Newberry, page 5; Bruckner vs. Lawrence, page 19; Scott vs. Detroit Young Men's Society, page 119; and Galloway vs. Holmes, page 330, In Second Douglass, Bronson vs. Newberry, page 38; Atwood vs. Gillett, page 206; Farmers' and Mechanics' Bank vs. Kingsley, page 370. These and other decisions show Judge Ransom to have been a man of great good sense and large research and a comprehensive acquaintance with legal principles. He was plain and simple in his dress, deportment and habits, and known to be a man of integrity and great independence of character.

Reilly, Cornelius J.—Was born of Irish parents, at Heart Prairie, Wisconsin. Soon after they removed to Racine, Wisconsin, where his father engaged in the manufacture of mowers and reapers. In 1867 he entered the law office of Moore & Griffin, Detroit, remaining with them four years. In 1869 he was admitted to the bar before the Supreme Court. He practiced law from 1871 to April, 1875, when he was elected Judge of the Third District. His term was to commence January, 1876; but before that time his predecessor, Judge Patchin, resigned, and November 22d, Mr. Reilly was appointed by Governor Bagley to fill the vacancy. He resigned in 1878, since which he has practiced law at Detroit. He was nominated for Circuit Judge by the Democrats in 1882. but was defeated by a small majority by William Jennison.

RUSSELL, FREDERICK J.—Of Hart, was born at Orion, Oakland County, Michigan, October 7, 1841. At the age of 16 he went with his parents into the then wilderness of Oceana County. He attended district and graded schools and spent two terms, in 1860 and 1861, at the State Normal School. August 8, 1862, he enlisted in the Twenty-fifth Michigan Infantry, but owing to physical infirmities he was not mustered into the United States service. He was admitted to the bar at Hart, Michigan, September, 20, 1866, where he at once commenced the practice of law, In June, 1868, he was admitted to practice in the United States courts and was appointed United States Commissioner for the Western District of Michigan; was elected Circuit Court Commissioner in 1868 and re elected in 1870; was appointed Judge of Probate for Oceana county in 1872, and was twice elected to that position, holding that office nine successive years. He was appointed by Governor Jerome, January 5, 1881, to fill the vacancy caused by the resignation of Hon. Michael Brown, and in April following was elected to the same office for full term, being the unanimous choice of both parties. Probably no judge now on the bench in Michigan had more difficulties to contend with in securing an education than Judge Russell. The meagre facilities afforded by a new county, infirmities of the body and long and serious illness all combined to discourage him; but by improving every available moment, and by attending school summers and teaching winters, he succeeded in fitting himself to fill with credit the several positions which he has been called upon to hold. He has been a prominent Republican ever since he arrived at manhood. Although often solicited to let his name be used as a candidate for State Senator, he has steadily declined the nomination. In addition to his professional duties, he is also interested in stock-raising, agricultural pursuits and banking.

SIBLEY, SOLOMON.—Born in Sutton, Massachusetts, October 7, 1769. In 1819 he took part in what was called the "Pontiac Mill Company," which erected the first flouring and saw mills in that town. In 1824 he was appointed Judge of the Supreme Court, and held the office until 1836, when he resigned in consequence of increasing deafness. He died at Detroit, April 4, 1846. He was universally respected for his talents, and manifold wisdom. He left three sons, two born in Detroit, and all of whom have conferred honor upon the family name as public men; among them Ex-Governor H. H. Sibley, of Minnesota.

SHIPMAN, JOHN B.—Was born in Saybrook, Conn., and can trace his ancestry back to 1639. He was educated in the common schools in Liv-

ingston, N. Y. to which place his father removed when he was a child. From thence he came to Ypsilanti, Michigan, where the father died, leaving his son dependant upon his own energy. He studied law in Centerville with Chester Gurney, the abolition candidate for governor when Birney ran for President. He was admitted to the bar in St. Joseph county, and has been ever since in the practice of his profession. He acquired considerable distinction as counsel for the defendant in the celebrated Edmonds inpeachment trial. In 1878 he was elected Circuit Judge by a fusion of Democrats and the Nationals upon a Greenback platform.

SMITH, ANDREW J.—Of Cassoplis, was born near Chillicothe, Ohio, September 2, 1818. In 1826 he removed with his parents to Rush county, Indiana, and in 1835 to Porter county, Indiana, where Valparaiso is now situated. His mother died when he was nine months old, and his father being poor he had very limited educational advantages. At the age of twenty-one he was elected constable of Valparaiso for one year. In December, 1840, he removed to Cass county, Michigan, where he has since resided. Became clerk in a store in 1849, and in 1851 he was placed in charge of a branch store by his employers, where he remained until the fall of 1855. From 1856 he has devoted himself entirely to law, being admitted to the bar in 1857. In 1858 he was elected Prosecuting Attorney for Cass county, in which capacity he served twelve years; member of School Board twelve years, member of village council for four years, eighteen years a trustee of the Presbyterian Church, of which he has been a member since 1845. He was elected Attorney General of the State in 1874, and while holding that office, though favoring a prohibitory law, he defended the constitutionality of the liquor tax law before the Supreme Court with great ability. He was elected Judge of the Second Judicial Circuit in 1878 to fill a vacancy. He was re-elected to the same office in 1881 without opposition.

SMITH, VERNON H.—Of Ionia, was born in Canada, December 29, 1838, of American parentage. His paternal grand-parents formerly lived in Massachussetts. Both his parents were born in the State of New York, and moved from Warren county of that state, into Canada. He received a common school education. Came to Michigan in November, 1858, and has since resided in Ionia county, and most of the time in the village and city of Ionia, with the exception of the years of 1864, '65 and '66, when he lived on a farm in the township of Orleans. In 1866 he was elected

Register of Deeds, and re-elected in 1868. Studied law during 1862, and resumed it again in January, 1871. Was admitted to the bar in August, 1872, and at once commenced the prcctice of law, forming a co-partnership with Lemuel Clute, Esq., of Ionia. During the years 1877 to 1880, was a member of the firm of Smith & Sessions. Was elected Circuit Court Commissioner in 1874, and held the office for two years. Was a Republican until 1872, when he supported Horace Greeley for President, and afterwards acted with the Democrats. Was elected Circuit Judge in the spring of 1881, by a majority of about 2,000, being nominated by both the Democratic and a People's Convention.

SPEED, JOHN J.—Of Detroit, was born in the town of Ithaca, N. Y., January 14,1839. In 1848 he removed to Detroit, Michigan; he graduated at the Ann Arbor University; studied law with the late Robert P. Toms, the late Jacob M. Howard, and Messrs. Jerome and Swift, of Detroit; admitted to the bar in 1861; Representative in the State Legislature for the First District, Detroit, for the years 1873–4, and was elected School Inspector of the Fifth Ward, Detroit, 1877. Under an act of the State Legislature, to provide two additional judges in the third circuit, he was appointed one of those judges by Governor Jerome, December 3, 1881, and was elected in November 1882, for the balance of the term. He is of a judicial temperament, and this, with his natural and acquired talents, makes him successful on the bench.

STEERE, JOSEPH H.—Of Sault St. Marie, was born May 19, 1852, at Addison, Lenawee county, Michigan. Removed to the State of Minnesota with his parents in 1854. Returned to Adrian, Michigan, in 1861; worked on a farm and taught school; attended Raisin Valley Seminary and Adrian High School, winters, until 1872. He then entered the literary class of Michigan University, and graduated from there in the classical course in 1876. Studied law with Messrs. Geddes and Miller, of Adrian. Admitted to the bar in 1878. In the same year removed to his present place of residence and began the practice of law. Elected Prosecuting Attorney of Chippewa county in 1880. He was elected Judge of the Eleventh Circuit in the spring of 1881, at the age of 28.

STEVENS, HERMAN W.—Of Port Huron, is a native of Michigan, now thirty-five years of age. Mr. Stevens graduated from the literary department of the Michigan University in 1866, and from the law department of that institution in 1868, and at once began the practice of his

profession at Port Huron, and was so engaged without interruption until January 1st, 1882, when he assumed the duties of Circuit Judge of the Sixteenth Judicial Circuit.

STICKNEY, WILLIAM W.—Was born January 30, 1832, at Shoreham, Vermont. Received a common school education and afterwards attended Newton Academy, at Shoreham, Vermont, for several terms. Taught school in Shoreham. In 1854 entered the State and National Law School at Poughkeepsie, New York, and graduated therefrom in August, 1855. In the winter of 1855-6 he attended the private law school of Hon. Chester Hayden, at Poland, Ohio. In the spring of 1856 he went to Lapeer, Michigan, and entered the law office of John M. Wattles. Admitted to practice June 18, 1856, at Flint, Michigan, by Judge S. M. Green. At once commenced the practice of law at Lapeer, where he has continued to reside since. In 1859 he formed a co-partnership with Hon. Wm. Hemingway, which continued for three years. Was Prosecuting Attorney for Lapeer County for the years 1871-2. Was a member of the School Board for the City of Lapeer for ten years, and for several years was president of the Board. In 1881 was elected Circuit Judge for the Fourth Circuit, over Judge Gaskill. In politics has always been a Democrat. From the time of his admission to the bar until his election as Circuit Judge was always a hard worker in his profession. Besides attending to his duties as Circuit Judge he is engaged in farming, and resides on his farm at Lapeer. Judge Stickney has given great satisfaction to lawyers and laymen. He possesses in a marked degree the judicial temperament.

STONE, JOHN W.—Of Grand Rapids, was born at Wadsworth, Medina county, Ohio, July 18, 1838; received an academic education; removed to Allegan county, Michigan, in 1856; commenced the study of law in 1859; was elected County Clerk of Allegan county in 1860; was admitted to the bar in January, 1862; was re-elected County Clerk in 1862; was elected Prosecuting Attorney of Allegan county in 1864, and re-elected twice, holding the office six years; in 1865 formed a law partnership with Hon. D. J. Arnold, composing the firm of Arnold & Stone, which relation continued until 1873; was elected President of Allegan village in 1872; was elected Circuit Judge of the Twentieth Judicial Circuit of Michigan, composed of Allegan and Ottawa counties, in April, 1873, which office he held until November 1, when he resigned and removed to Grand Rapids to resume the practice of law; has continued the prac-

tice ever since ; was elected to the 45th Congress in 1876, from the Fifth District, and was re-elected to the 46th Congress in 1878 ; in May, 1882, was appointed United States Attorney for the Western District of Michigan, which office he still holds, and is also engaged in general practice with W. W. Hyde, Esq,, under the firm name of Stone & Hyde.

SUTHERLAND, JABEZ G.—Was born in Onondaga county, New York, October 6, 1825 ; removed with his father to Michigan in 1836, and has ever since resided in the counties of Genesee and Saginaw. He studied law, and came to the bar in 1848 ; in 1849 he settled in Saginaw City, and was made Prosecuting Attorney for that county ; he was a delegate to the Constitutional Convention of 1850, and it was through his efforts that the counties of Tuscola, Saginaw, Midland, Montcalm and Newaygo, were named as entitled to one Representative in the Legislature, without regard to the number of their inhabitants. In 1853 he was elected to the State Legislature ; durir g the next ten years was wholly devoted to the practice of his profession with unusual success. In 1858 he was the unsuccessful Democratic candidate for the office of Attorney General ; in 1863 he was elected Circuit Judge of the Tenth Circuit, and re-elected to the same position in 1869 without opposition. His Circuit was for a time the largest in the State, and the character of the business important and his written decisions would fill many volumes. He was also a delegate to the Constitutional Convention of 1867. In August, 1870, he was nominated for Congress by the Democrats, with the help of the Republicans, and contrary to his will, and at the election in November was elected to the Forty-Second Congress.

SWAYNE, NOAH H.—As the successor of John McLean, and because of his judicial connection with the State of Michigan, we submit the following particulars respecting Mr. Justice Swayne: He was born in Culpepper county, Virginia, December 27, 1804. While perfoming the duties of clerk in an apothecary store in Alexandria, he acquired the rudiments of an English and classical education, and prepared himself for the Medical profession. He soon began the study of law, however, at Warrenton, and immediately after his admission to the bar in 1824, he removed to Ohio and settled at Coshocton. In 1829 he was elected to the Legislature of that State; in 1830 he was appointed by President Jackson, United States District Attorney for Ohio, holding the position nine years, and residing in Columbus. In 1834 he was chosen Judge of the Court of Common Pleas, but declined the office. He 1836 he was

again elected to the State Legislature, and took a leading part in organizing Institutions or Asylums for the benefit of the Blind, the Lunatic, and the Deaf and Dumb of the State; and in 1861 he was appointed by President Lincoln a Justice of the Supreme Court of the United States, his District comprehending the States of Ohio, Michigan, Kentucky and Tennessee. He died in 1883.

TAFT, LEVI BENJAMIN.—Was born in Billingham, Norfolk county, Mass., August 6, 1821. His father was Benjamin Taft, a farmer; his mother, Vienna Cook Taft. Worked on farm and attended district school. Removed to Detroit in 1834 and attended school; also store of Col. Levi and Olney Cook, his uncles, living with Col. Cook. Prepared for college partly at Hopkins and partly at Franklin Academy, Mass. Graduated at Dartmouth in 1843. Removed to Detroit 1843, studying law with Barstow & Lockwood, G. E. Hand and J. M. Howard. Admitted to State Supreme and Federal Circuit Court at Detroit in 1845. Practiced at Detroit. Was partner, first, of Hon. H. H. Hobart, till his removal to Wis., then with Oscar F. Cargill. Judge Taft removed to Niles in 1848. Hon. George H. Jerome and Judge Martin were his partners there. Served one term as Recorder of Niles. Was Prosecuting Attorney of Berrien county from 1851 to 1853, when he removed to Chicago, where his partners were Judge Hiram F. Mather (all the time he lived there), Hon. Thomas B. Bryan, Judge T. Lyle Dickey, Hon. George C. Bates and Col. W. W. Wheeler, (28 Michigan Infantry). Had large practice in Chicago. Engaged as solicitor for complainant in one case which remained in the courts for twelve years, that of J. C. Freer, administrator of Pierce, vs. Horatio Seymour et al, executors and devisees of Henry Seymour, deceased, in the U. S. Circuit Court, N. District, Ill. Judge Conklin, of New York, and others, argued the case for defendants in the U. S. Circuit. Judge Kernan and R. Conklin, the latter also brother-in-law of Horatio Seymour, argued on same side in U. S. Supreme Court. Both Courts decided in favor of complainants (Seymour vs. Freer 8 Wallace, 202). Judge Taft and partners received $18,500 fees in the case, which involved rights to property valued at nearly a half million. In 1865 Judge Taft removed to Lake Forrest, Illinois, still doing business in Chicago; was one of the incorporators of Lake Forrest and served as Alderman of that city. In 1868, because of impaired health, he removed to Pontiac, Michigan, and bought a farm of 241 acres in that vicinity, and for eight years carried on general farming, stock raising, etc Was Justice of the Peace for one term during this

period. Having recovered his health, he resumed the practice of law in Detroit in 1872. September 15, 1873, he was appointed Judge of the Sixth Circuit, vice Dewey, resigned. After serving out the term he resumed the practice of law at Pontiac, where he still is, Samuel W. Smith, prosecuting attorney, being his partner. Has been for years and is an Elder in the First Presbyterian Church of Pontiac, also a director in the Oakland County Agricultural Society. Was married at Pontiac December 24, 1846, to Julia A. Bishop, daughter of Jacob G. and Ann Bishop, and has five children now living, two sons and three daughters.

TENNANT, WILLIAM S.—Was born in Camden, Ohio, February 7th, 1842. When fifteen years of age he entered Oberlin College, from which he graduated in 1863. He taught in the High School at Flint one year, and in 1864 entered the law department of the University. At the close of the term he studied law with the late William M. Fenton and Sumner Howard at Flint, and was admitted to the bar in 1865. In 1866 he removed to Saginaw, and was Superintendent of Schools in East Saginaw one term. The same year he commenced the practice of law in East Saginaw, which he pursued till 1874. Judge Moore having then resigned he was nominated by the bar of the Tenth District as his successor, and was elected without opposition. In 1875 he was re-elected for the full term receiving the entire vote cast. He is now a member of the able law firm of Tarsney, Tennant & Weadock, at East Saginaw.

TURNBULL, JOHN.—As this eminent author and jurist was the father-in-law of William Woodbridge, and spent the last six years of his life as a citizen of Michigan, he appropriately comes into this record. He was born in Connecticut in 1750, and graduated at Yale College at a very early age. In 1772 he published the first part of his poem, entitled "The Progress of Idleness." In the following year he was admitted to the bar in Connecticut, and removing to Boston, continued his legal studies in the office of John Adams. He returned to Connecticut in 1774, and commenced the practice of his profession in New Haven. The first part of "McFingal" was published in Philadelphia in 1775; but in 1782 the poem was completed and published in Hartford, where the author at that time resided. More than thirty editions of this work were published in his lifetime. In 1789 he was appointed State Attorney for the County of Hartford, and in 1801 a Judge of the Superior Court of Errors, which position he held until 1819. In 1825 he removed to Detroit and resided with his daughter, Mrs. Woodbridge, and he died at Springwells, in May, 1831.

TURNER, JOSIAH.—Was born in New Haven, Vermont, September 1st, 1811; received an academic education; studied law with his uncle, Bates Turner, and was admitted to the bar at St. Albans, in 1833, where he practiced his profession till 1840, when he emigrated to Michigan, and settled in Howell, where he resumed his profession. In 1857, he was appointed a Justice of the Supreme Court, which office expired the same year. He was soon after elected Judge of the Seventh Judicial Circuit for six years, and re-elected in 1863, and also in 1869, supported by both parties, and in 1875, his fourth term of six years each. He removed from Howell to Owosso in 1860, of which city he was Mayor in 1864. He was a member of the Constitutional convention of 1867.

TUTTLE, JONATHAN B.—Was born August 15, 1841, at Lodi, Ohio. Educated in the common-schools and at Oberlin College; at eighteen began the study of law, graduating at the Ohio State and Union Law College in 1862. Same year admitted to practice in the State Courts at Toledo and the Federal Courts of Cleveland. Immediaely after he entered the army and was promoted from the ranks till he was Captain in the infantry, and was honorably discharged in 1864 for physical disabilities. Soon after he removed to Alpena, where he engaged in the practice of law, and has at various times held the offices of Judge of Probate, Prosecuting Attorney, U. S. Commissioner, School Inspector, etc. In 1877, on the organization of the 23rd Judicial Circuit, he was elected Circuit Judge; re-elected in 1883. Is a democrat.

UPSON, CHARLES.—Born in Southington, Hartford county, Connecticut, March 19, 1828; received a good English education; removed to Michigan in 1845; studied law, and came to the bar in 1847; in 1849 and 1850 was County Clerk for St. Joseph county; in 1853 and 1854 was Prosecuting Attorney for the same; in 1855 and 1856 held the office of State Senator; in 1861 and 1862 he was Attorney-General for Michigan, and was elected a Representative from Michigan to the Thirty-eighth Congress, serving on the Committee on Elections and Unfinished Business. Re-elected to the Thirty-ninth Congress, serving on the Committee on Elections and Revolutionary Pensions. He was also a Delegate to the Philadelphia "Loyalists' Convention" of 1866; and was re-elected to the Fortieth Congress, and made Chairman of the Committee on Expenditures in the Navy Department. In 1870 he was elected Judge of the Circuit Court for the Fifteenth District of Michigan. On the expiration of his term, he resumed the practice of law.

VAN ZILE, PHILIP T.—Was born July 20, 1844, in Osceola, Tioga county, Pennsylvania. When he was fourteen his father lost a competency by endorsing for a friend. He graduated at Alfred University, Alleghany County, N. Y., in 1863, delivering the valedictory address. Taught school in Lorain County, Ohio; was Captain of Co. D., 3d Ohio Infantry during a portion of the war; graduated at the Law Department at Ann Arbor in 1867. In 1868 was elected Prosecuting Attorney of Eaton County; in 1870 Judge of Probate; in 1873 Mayor of Charlotte; in 1875 Judge of Fifth Circuit; in 1878 he was appointed United States Attorney for Utah; having returned to Michigan, he is now Chairman of the Republican State Committee. His natural abilities and attainments are of a high order, and if he lives greater honors will probably be accorded him than in the past.

WALKER, CHARLES IRISH.—Was born in Otsego county, New York, April 25, 1814; received a common school education and was afterwards a merchant's clerk; and in 1836 removed to Michigan and settled at Grand Rapids, where he was engaged in the purchase, for others, of real estate. In 1839 he began the study of law; in 1840 he was elected to the State Legislature; in 1841 went to New England to complete his legal studies; and having come to the bar in Vermont, spent about ten years in that State practicing his profession. In 1851 he returned to Michigan and settled in Detroit; and in 1857 he aided in reviving the Historical Society of Michigan, and became its Corresponding Secretary, delivering occasional addresses on the early history of the State. On the organization of the Law Department of the University of Michigan in 1859, he was appointed Professor of Law, which honorable position he still holds, the school over which he presides being considered one of the most successful and largest in the Union. In 1867 he was appointed by the Governor to fill a vacancy in the Judgeship of the Third Judicial Circuit, which office, after serving for a time, he resigned, and returned to the more lucrative employment of practicing his profession, of which he is a distinguished and most successful member.

WELLS, HEZEKIAH G.—Was born June 16, 1812, at Steubenville, Ohio; educated at Kenyon College; read law in the office of I. & D. L. Collier, Steubenville. Removed to Schoolcraft, Kalamazoo county, Michigan, July 15, 1833. Was for years treasurer, also supervisor of Schoolcraft. Was a member of the constitutional conventions of 1835 and 1850, and of the constitutional commission of 1873. Appointed Minister to Hon-

duras by Lincoln, and Consul to Manchester by Johnson, but declined both. In 1877 was appointed Presiding Judge of the Court of Commissioners on the Alabama Claims, and held the office till the business was disposed of. Has been a visitor to the West Point Military Academy. Has for many years resided at Kalamazoo village (now city) of which, and of the State, he has long been an honored citizen. Is a Republican.

WHEELER, HARRISON H.—Was born March 22, 1839, at Hadley, Lapeer county, Michigan. Was educated in the common schools. Was brought up on a farm. Taught school winters after 18 till war broke out, when he enlisted in Company C, (Capt. Bunnell) 10th Michigan Infantry (Col. Lum). Remained in service over three years; wounded three times; last time rendered left arm useless. After war studied law with Hon. Isaac Marston; admitted to bar out of his office in 1867 by Judge J. G. Sutherland. Was elected State Senator from Bay county in 1870; re-elected in 1872. Appointed Circuit Judge 1874 by Gov. Bagley; afterwards elected by both parties; resigned in 1878 and resumed practice of law. Now resides at Manistee.

WHIPPLE, CHARLES W.—(See page 288.)

WHITNEY, A. G.—He was a prominent member of the Detroit bar in the early part of this century. Chancellor Farnsworth studied law with him. He was Judge of the Recorder's Court of Detroit during the years 1824 and 1825.

WHITE, SHUBAEL F.—Was born at Marshall, Mich., June 17th, 1841. Brought up on a farm in Calhoun county; educated in district school, Olivet College and at Michigan University, graduating at Ann Arbor in 1864, having supported himself in college by teaching and working on the farm during vacations. Enlisted in Mechanics and Engineers in 1861, but was rejected on account of bronchial difficulty, but enlisted as a private in Company A, 28 Michigan Infantry, August 8, 1864; promoted to 1st Lieutenant September 11, 1864, and to Captain to date from the battle of Nashville, December 17, 1864; Provost Marshal of North Carolina part of 1865–6. Graduated at Albany Law School in 1867; admitted to bar in Calhoun county in May, 1867, and in June of that year removed to Ludington and practiced law. Was Judge of 19th Circuit in 1873–4. Was elected as a Republican Senator from 26th District in 1882. In October, 1883, he removed to Duluth, Minnesota, and engaged in the practice of his profession.

WILKINS, Ross.—Was born in Penn.; educated for the bar in that State; and removed to the west at an early day, with a commission from President Jackson, as a Federal Judge for the territory of Michigan. In 1837, and on several subsequent occasions, he was appointed a Regent of the State University. Aside from exerting much influence in his judicial capacity, he took an interest in the public affairs of the State. He presided over the first war meeting held in Detroit after the commencement of the rebellion. He was appointed District Judge of the Eastern District of Michigan in ——, and remained in office until the summer of 1870, when he voluntarily retired from the Bench. He died at Detroit

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WILLIAMS, WILLIAM D.—Was born in 1835, in Lima, Michigan. His father was one of the earliest settlers of that township. William worked on the farm, attending school in the winter; afterward attended school at Albion Seminary, and two and a half years at the University, graduating from the scientific department in 1857. Having a taste for mathematics he designed to become a Civil Engineer; but, having developed an aptitude for public speaking, he began the study of law with Judge Douglass of Detroit. He was admitted to the bar in 1859, and settled in the Upper Peninsula, where he has since resided, first in the copper district, but since 1874 in Marquette. He has been Prosecuting Attorney for Ontonagon county, and was a member of the Legislature in 1869–70 from that county. While in legal practice he was extensively employed by the mining and railroad corporations. He is a large holder of property in the copper district. He was elected Circuit Judge as the nominee of both political parties in 1875.

WING, WARNER.—Born in Marietta, Ohio, September 19, 1805; graduated at the Northampton Law School, Massachusetts, and removed to the Territory of Michigan in 1817. He settled on the River Raisin, where he lived for many years, actively engaged in the practice of law, in which he was eminently successful; was Judge of the Circuit Court from 1845 to 1856, during which period it was identical with the Supreme Court. Of all the trials over which he presided as judge, the most important, perhaps, was that commonly known as the Railroad Conspiracy Case, in 1851, on which occasion, according to universal opinion, he acquitted himself with very rare ability. The proceedings of this trial were published in a volume of more than eight hundred and fifty pages, and form a curious episode in the history of railroads, and of

the State of Michigan. He was the attorney for the Michigan Southern and Northern Indiana Railroad Company for many years. He died at Monroe March 11, 1876. (See introduction to 38 Michigan Rep.)

WITHERELL, JAMES.—(See p. 282.)

WITHERELL, BENJAMIN F. H.—He was the son of James Witherell, and was during all his mature life identified with the Territory and State of Michigan. He was a lawyer by profession, long a successful practitioner in Detroit, and held a prominent judgeship for many years. He was called by his friends a "Walking Historical Dictionary of Detroit," and published a series of Historical Recollections, of great value and interest; and his death was lamented as a public calamity. His last judicial position was that of Judge of the third Circuit Court. He took an active interest in all public affairs during the Rebellion, and was the originator and chosen President of the Soldiers' and Sailors' Monument Association when organized, and it was while deeply engaged in maturing its plans that he died in Detroit June 26, 1867, giving to the patriotic work the last hours of his life. He was also appointed on several occasions a Regent of the State University.

WITHEY, SOLOMON L.—Born in St. Albans, Vermont, April 21, 1820; removed to Ohio in 1835, where he obtained a good English education; removed to Grand Rapids, Michigan in 1839. In 1839 he began the study of law, came to the bar in 1844, and became a partner of the late Chief Justice Martin, continuing with him until he was called to the bench, 1863. In 1848 he was elected Judge of Probate: in 1860 he was elected to the State Senate, and took an active part in promoting effective legislation for putting down the Rebellion. Was appointed by President Lincoln United States District Judge for the Western District of Michigan, which office he still holds. During the illness of Judge Wilson, of Northern Ohio, he held the United States Courts at Cleveland; and for a year preceding the resignation of Judge Wilkins, he presided over the U. S. Courts of the Eastern District of Michigan. In Dec. 1869, he received from President Grant a commission as Judge of the Sixth United States Judicial Circuit; but his duty to his family compelled him to decline the honor For that position he was warmly supported by the leading members of the Bar in Michigan and Northern Ohio, and of all political parties, and that fact alone made him reluctant to decline. Judge Withey is President of the First National Bank of Grand Rapids.

He is a man of culture; and as a citizen, a lawyer and judge, occupies a leading position in the State.

WIXSON, LEVI S.—Was born on the 9th of January, 1829, in the township of Pickering, Upper Canada, now Ontario. He is of American parentage. His father was born in Steuben county, New York, the family having come from England to Massachusetts in or about the year 1634. His early life was passed on a farm. After graduating from the law department of the Michigan University in the class of 1862; he practiced his profession at Lexington, Sanilac county, until elected Circuit Judge in the spring of 1879. He has held a county or judicial office continuously since 1862, having been elected three times Prosecuting Attorney, three times Judge of Probate, and twice Circuit Judge. In politics he has been a Republican since 1856. In 1882 he changed his residence from Lexington, where he resided forty years, to Caro, Tuscola county.

WOODBRIDGE, WILLIAM.—Born in Norwich, Connecticut, August 20, 1780, and his father becoming one of the earliest emigrants to the Northwest Territory, he removed to Marietta in 1791. He received his early education in Connecticut; studied law at Litchfield, Connecticut, and was admitted to the bar in Ohio in 1808; was prosecuting attorney for his county, which office he held until 1814, and during the same period he was also a member of the State Senate. In 1814 he received from President Madison, unexpectedly, the appointment of Secretary of the Territory of Michigan, and removed to Detroit; and in 1819 he was elected the first delegate from Michigan to Congress, where he was very active in promoting the interests of his constituents. In 1828 he was appointed Judge of the Supreme Court of Michigan Territory, and held the office four years; in 1835 he was a member of the convention called to form a State Constitution; in 1837 he was elected to the State Senate of Michigan; in 1839 he was chosen Governor of the State; and he was a Senator in Congress from 1841 to 1847. He was a working member on many important committees; and his reports and speeches were numerous; and Daniel Webster, in a note to his speech in defense of the Ashburton Treaty, attributed to Mr. Woodbridge the first suggestion that was ever made to him for inserting in that treaty a provision for the surrender of fugitives, under certain circumstances, upon the demand of foreign governments. For many years before his death he lived in retirement at Detroit devoting himself to his books and the pleasures of

horticulture, for which he had a special fondness. Died October 20, 1861. In 1861 a small volume was published entitled the "Life of William Woodbridge," from the pen of Charles Lanman, (from whose "Red Book of Michigan" we have obtained many items of fact for this part of our work.) Among the many opinions expressed of Governor Woodbridge by leading men, soon after his death, were the following: That he was an eminent jurist and constitutional lawyer; the oldest and most distinguished member of the Detroit bar; eminently a man of principle and honor; a faithful and honorable public servant; had a highly cultivated and refined taste, and left to his children the rich legacy of a spotless name. (See p. 285.)

WOODWARD, AUGUSTUS B.—He was a native of Virginia; emigrated to Michigan in 1805, where he was appointed a Judge of the Territory, which position he held until 1824. He was the author of a "Code of Laws," which bears his name. In 1812 he had a resolution adopted in the Legislature prohibiting the wearing of apparel made from English goods. For further particulars see page 281.

ADDENDA.†

BLACKMAN, DANIEL.—Was born in Newtown, Fairfield county, Conn., December 31, 1821; received an academical education; taught school; studied law and was admitted to the bar at Fairfield in 1845. He practiced law for six years at Danbury; in 1851 he removed to Cassopolis, Michigan, and resumed the practice of law. In 1869 he was elected on a Peoples' ticket (he was a Democrat) Judge of the Second Circuit, to fill vacancy, *vice* Nathaniel Bacon, deceased.

CRANE, ALEXANDER D.—Of Dexter, was born in New York, in 1817; educated in the common schools; removed to Michigan; studied law and was admitted to the bar at Ann Arbor in 1855. Was elected Prosecuting Attorney of Washtenau county in 1858. Was appointed Judge of the Washtenau Circuit by Governor Bagley, January 7, 1873, *vice* Higby, resigned, and held the office till January 1, 1876, since which he has practiced his profession, and held the office of Justice of the Peace at Dexter.

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† The *data* for the above sketches came too late for their appearance in their regular order.

DOUGLASS, SAMUEL T.—Was of New England lineage, his father having been a native of Connecticut of Scotch descent, and his mother a native of Massachusetts of English descent. He was born in Rutland county, Vermont, in the year 1814, but the next year his parents emigrated to Fredonia, Chautauqua county, New York, where he lived till early manhood. He was educated principally at the Fredonia Academy, and his professional studies were principally prosecuted in the office of Hon. James Mullet, of Fredonia, for a long time one of the leaders of the Bar of Western New York, and ultimately one of the judges of the Supreme Court and of the Court of Appeals of that state. Judge D. emigrated to Detroit in 1837. Having completed his professional studies in the office of Bates & Walker of that city was admitted to the bar in January, 1838, and soon afterwards commenced the practice of his profession in Ann Arbor, but remained there but a few months. In the Autumn of 1838 he removed to Detroit, which has been his place of business ever since; it was his residence until 1860—since that time he has resided, and now resides, on Grosse Isle, an island in Detroit river. He was the first reporter of the Supreme Court of Michigan, and. as such, reported the decisions of that court from 1843 to 1847 inclusive. This office he resigned about 1848. Prior to January 1, 1858, the Supreme Court of this state was composed of the several Circuit judges, who, until January 1, 1852, were appointed by the Governor, by and with the advice and consent of the Senate, and after that were elected in the sev eral Circuits. At the first judical election in this state which was held in the spring of 1851, Judge Douglass, running as an independent candidate, was elected Circuit Judge of the Third Judicial Circuit, composed of Wayne county, to which Cheboygan and Emmett were afterwards temporarily annexed. The term of his office commenced in January 1, 1852. He held the office from January 1, 1852, to May, 1857, when he resigned. The Separate Supreme Court as now constituted came into existence January 1, 1858. At the election for judge of that court, held in April, 1857, Judge Douglass was one of the candidates on the democractic ticket for a place on that bench, but, in the great political revolution which then occurred, the entire ticket was defeated by a large majority, and his relative and former partner, Judge Campbell, who, being from the same portion of the state, might be regarded as the opposing candidate, was elected. Since then Judge Douglass had been continuously and still is, engaged in the practice of his profession. He is now 70 years of age, and, with the exception of Judge Johnson, of Jackson, is the only survivor of the eight Circuit judges who constituted the

Supreme Court while he was a member of it. With the exception of Theodore Romeyn, who is somewhat his senior, he is believed to be the oldest practioner in Detroit.

JOHNSON, DAVID.—Was Judge of the Jackson Circuit under the Constitution of 1850, and *ex officio* Judge of the Supreme Court. He and Judge Douglass are the two survivors of the old Supreme Court before the changes of 1857. (See sketch of Judge Douglass.) We have been expecting *data* from which to write a suitable sketch of Judge Johnson, but when too late to seek elsewhere, this able judge modestly says: "There are no incidents in my life worth recording." We have no doubt that for once the Judge is in error, but it is too late to reverse the decision n this volume, except to say that he ranks high as a lawyer and judge. He is a Democrat in politics. He resides at Jackson.

MANNING RANDOLPH.—Was admitted to the bar in New York. Removed to Pontiac, Mich., and practiced law. Was appointed Chancellor of Michigan in 1842, holding the office till 1846, when he resigned and resumed the practice of law. On the reorganization of the Supreme Court in 1857 he was elected one of the judges, holding the position till his death in 1864. He was a man who honored every station, public and private to which he was called. We received excellent advice from Judge Manning on entering upon the study of law, the year prior to his death. We do not get the expected *data* in time for a more extended notice of one of Michigan's most distinguished jurists.

MATTHEWS, STANLEY.—Was born July 21, 1824, at Cincinnati, Ohio. Eldest son of Thomas J. Matthews and Isabella, his wife. From his infancy until 1832 his father resided in Lexington, Kentucky, where he was Professor of Mathematics in Transylvania University. The family returned to Cincinnati in that year, from which time until 1839 the subject of this sketch was a pupil at Woodward High School, when he was admitted to the junior class at Kenyon College, Ohio, from which he graduated in 1840. In the fall of that year he entered the office of Vachel Worthington as a student of law, and going to Maury county, Tennessee, in 1842, was there admitted to the bar and commenced the practice of his profession. He then married, and shortly after returned to Cincinnati and became a member of the bar of that city. From 1846 to 1849 he also assisted in the editorial conduct of the Cincinnati *Herald*, an anti-lavery newspaper, founded by Dr. Gamaliel Bailey, who left it to estab-

lish the *National Era* at Washington City. Subsequently devoting himself exclusively to the law, in 1851 he was elected one of the judges of the Court of Common Pleas for Hamilton county, at the first election for judges occurring under the Ohio Constitution of 1851. This position he resigned January 1, 1853, to resume the practice of law as a partner with his preceptor, V. Worthington, and a son of the latter, James T. Worthington. In 1855 he was elected, as a Democrat, to the Senate of Ohio from Hamilton county, and in 1858 he was appointed by President Buchanan attorney of the United States for the Southern district of Ohio. In May, 1861, he was appointed by Governor Dennison Lieutenant-Colonel of the 23d Regiment Ohio Volunteer Infantry, and went into the military service of the United States. He was promoted in that year to be Colonel of the 51st Ohio Volunteer Infantry, and served as such, having command of a brigade in the army of the Cumberland, under Generals Buell and Rosecrans. In 1863 he was elected Judge of the Superior Court of Cincinnati, and resigned his commission in the army to accept the position. In 1864 he returned to the bar of Cincinnati, resigning his office of Judge of the Superior Court. In 1876 he was nominated as the Republican candidate for Congress in the Second District, Hamilton county, Ohio, but his competitor, General Banning, was returned elected. In the spring of 1877, at the request of President Hayes, he took part as one of the counsel before the electoral commission, and opened the argument on behalf of the Republican electors in the Florida case, and made the principal argument for them in the Oregon case. We have never heard or read a clearer or abler presentation of a case than those made by Judge Matthews on these occasions. Soon after the inauguration of President Hayes he was elected by the Legislature of Ohio, then in session, to fill the unexpired term in the United States Senate of Hon. John Sherman, appointed Secretary of the Treasury. In 1881 he was nominated by President Garfield as Associate Justice of the Supreme Court to succeed Mr. Justice Swayne, retired, and having been confirmed was commissioned as such May 12, 1881. There is no abler jurist on the bench of the Supreme Court than Judge Matthews. He is by law required once in four years to sit in each Federal Circuit, so that he visits Michigan in his official capacity occasionally. When here in 1882 he met the bar at Col. H. M. Duffield's residence on Jefferson Avenue.

MORROW, HENRY A.—Was Judge of the Recorder's Court of Detroit, from 1855 to August 18, 1862, when he caught the war fever, and resigned,

and raised, and afterward commanded as Colonel, the 24th Michigan Infantry, which made a good record in the field. Since the war Colonel Morrow has been Lieutenant-Colonel of a Regiment of Infantry in the Regular Army. Judge Morrow filled the office of Recorder with credit. He is an orator of no mean rank. We reported one of his war speeches for the old Detroit *Advertiser* in long hand. A young lady received a letter from a young stenographer, who gave a few stenographic signs in his letter. She called on us to interpret it, saying: "I noticed that you reported Col. Morrow's speech." Of course she soon found out our ignorance of short-hand.

O'GRADY, JAMES.—Was born in Ireland in 1821; came to the United States with his parents when three months old; was educated at the district school at Shelburne, Vt. Studied law in office of Judge Asahel Peck, at Burlington, Vt.; admitted to bar in 1848; in 1849 went to California; was soon after appointed First Register of Probate of San Francisco, and was subsequently Register and Recorder of that city and county. From 1852 to 1864 he was on his farm at Shelburne, Vt.; in the latter year he removed to Marquette, Mich., where he engaged in the practice of law with Mr. Ross. Was the same year elected Representative in the Legislature; became Judge of 12th Circuit about 1868, and continued on the bench till his death, December, 1878. It is said that he had a remarkable memory, and that he was a great student of history. "His decisions as Judge," says one who knew him well, "were never, I believe, reversed by the Supreme Court."

SWIFT, GEORGE S.—Was practicing law in Detroit in 1866, when the people became considerably wrought up over the question of who should preside over the Recorder's Court. Circuit Judge Witherell had been Acting Judge since Judge Hyde's sickness, (which subsequently resulted in death.) Stephen P. Purdy was the regular democratic candidate, but the independent democratic voters rebelled against this nomination, and voted, as did the republicans, for George S. Swift, who was triumphant at the election. He has continued by repeated elections, Judge of the Court ever since. On one occasion B. T. Prentiss came near capturing the democratic nomination. At the last election for Judge, Edwin F. Conely was the democratic nominee, but Judge Swift was elected over him, the republicans making no nomination. Judge Swift very capably fills his position on the bench Cases from his Court are not often reversed in the Supreme Court. He is a merciful man, and yet, in administering the law, is a terror to evil doers.

PART III.

SKETCHES, REMINISCENCES

AND ANECDOTES,

OF THE OLD MEMBERS OF THE

CALHOUN AND KALAMAZOO COUNTY BARS.

BY A. D. P. VAN BUREN.

The period of which we write embraces most of the pioneer epoch of Central Michigan. At this time, from 1836 to 1848, Judge Epaphroditus Ransom, one of the Chief Justices of the State Supreme Court, was, *ex-officio*, a presiding circuit judge. His circuit then "embraced nearly one-fourth of the present inhabited area of the lower peninsula, commencing with Branch county at the south-east, thence north to Montcalm, including all the territory between that line and the eastern shore of Lake Michigan. Most of this vast tract was hardly more than an unbroken wilderness, the courts of which were held in the primitive school-houses and reached by the Judge on horseback."

There were two associate or side-judges, elected in each county, who sat with the judge during the term of court in their own county-seat. Many interesting incidents are given of Judge Ransom, and his legal cortege, making their accustomed journeys through the woods, from county-seat to county-seat, rude cavalier style. The early settlers—those true founders of this state, first reared the log-house, then the school-house, the meeting-house, and lastly the court house. These four—the home, the school, the church, and the court of justics, constitute the four corner-stones in the fabric of our civilization. The mechanics were at first the most needful class, then came the professional men, and among them the lawyer.

OLD LAWYERS.

"I have a great reverence," says Kennedy, "for the profession of the law and its votaries; but especially for that part of the tribe which comprehends the old and thorough-paced stagers of the bar." For the present these reminiscences will bide with the old stagers of the Calhoun and Kalamazoo county bars. Perhaps no profession abounds with so great a number of social, companionable fellows; free-lances, ready, at any time, to discuss in their shrewd, quaint, off-hand manner, the faults and foibles of mankind, especially of that class with whom they have been in such close intimacy. And what a fund of material for the *raconteur*, rich in anecdote and incident, they have gathered from their experience in "trying cases," which, as they meet in the bar-room, or congregate in the courts, they weave into admirable stories.

A knot of old lawyers thus assembled, reminds one of a set of players in the green-room, "breaking their unpremeditated jokes in the interval of business." And what a contrast between such an encounter of rival wits, and the after meeting of these same rivals, in an encounter of serious and almost tragic earnestness on the boards. The old lawyer seems to resort to colloquial life for diversion, or for relaxation from the strain of hard labor. Here he finds leisure and a tonic that invigorates him for his accustomed business routine, and severe mental contests in the court-room. But the old stagers are gone. Their eloquence is a thing of the past. The old forums now occupied by their successors no longer echo with the brilliant oratory of the old days. The decline of oratory in America is very apparent. There is scarcely a lingering trace, in our courts, of the forensic eloquence once so potent at the bar of Lexington in Henry Clay's best day, or at the Mississippi bar in S. S. Prentiss' day, or at the Columbia county (N. Y.) bar, in Elisha Williams time. Not that we now lack genius or talent in the profession of law; but that there is a lack of enthusiasm to kindle that genius and talent into a blaze of eloquence. Not that there is a lack of logic or learning at the bar to-day, but that we need the intense passion to set that logic and learning on fire, before we can have genuine oratory. Bradley, Stuart, Littlejohn, Chipman, Church when aroused, and Van Arman at his best, were eloquent men. They, as younger men, belonged to the epoch of oratory we have referred to, and may be said to have been among the last orators of this period of eloquent speech.

THE CALHOUN COUNTY BAR.

The old members of this bar were intellectually strong men, and able lawyers. Among them were men who aided largely in establishing the institutions of this State. The bar in its best days was conspicuous for its legal talent, and for that which is the glory of any profession—character above reproach. Bradley, Pratt and Van Arman were self-made men. Crary and Gordon had the benefit of a collegiate course and a thorough legal training.

ISAAC E. CRARY.

He was born October 2d, 1804, at Preston, New London county, Connecticut. He was of genuine Puritan stock of the Scotch border. Was the great, great grandson of Elder Wm. Brewster, of the May-Flower company. His early youth was spent on a farm. He graduated at Washington (Trinity) College, and read law with Henry W. Ellsworth. Practiced two years at Hartford, Connecticut, and at the same time assisted George D. Prentice editorially on the *New England Weekly Review*. Came to Marshall, Michigan, in 1832, where he began practice. Here he was appointed General of Militia. Was a member of the constitutional convention of 1835, and also in 1850. Was in 1835 delegate to Congress from this territory. Representative in Congress from 1836 to 1841. Was member of State Legislature and Speaker of the House in 1842. He died in Marshall May 8th, 1854. Isaac E. Crary was the friend and able adviser of Rev. John D. Pierce in founding the educational system of Michigan. Dr. Asa Bushnell, in his lecture on the historical personages of Connecticut, pays a high tribute to Mr. Crary in placing his name among the eminent historical characters of that State. And further adds: He is now using that talent for which he was honored here in helping to form a new State in the West." Mr. Crary became law partner with Abner Pratt in Marshall. He was a well read lawyer, safe counsellor, logical reasoner, and known more for his able management of suits than for forensic eloquence. Law, education and politics found in him an able and sterling exponent. A Democrat of the old school during the first epoch of politics in Michigan, whenever he appeared at the hustings his known ability and unblemished character gave great weight to his speeches. He "took the stump" for Van Buren in 1840, and for Polk in 1844. And in the unwritten political history of that day are many sound, logical speeches from Isaac E. Crary.

ANECDOTE.

'Tis said that every man has his weakness. Achilles had his in his heel. Isaac E. Crary showed where his was when in Congress, by his persistent attacks on Gen. Harrison, the president, for want of strategy at Tippecanoe. This aroused John Quincy Adams; but instead of himself punishing the "Wolverine" member for his temerity, he handed him over to Tom Corwin, who in that masterpiece of wit and ridicule, so used up our representative, that "the old man eloquent" in the House the next day, referred to the "late General Crary." Crary and Corwin are both dead, but that inimitable speech of the latter will ever live in the humorous literature of this country. "Never was speech couched in droller vein."

JAMES WRIGHT GORDON.

James Wright Gordon was born at Plainwell, Conn., 1809. Earned his B.A. in 1829, and his M.A. in 1830, at Trinity College, Conn. Was Professor in Geneva College, N.Y., where he studied law and was admitted to the bar. Settled in Marshall in 1835, and soon attained a deservedly high position at the bar. Was elected Lieutenant Governor in 1839, and by the retirement of Governor Woodbridge in 1841, became Governor, and held the office, 1841–2. He died at Pernambuco, in South America, where he held the office of Consul, December 1853, aged 44. Gordon was naturally endowed with a strong intellect, and good hard sense. His attainments, untiring energy, and character above reproach, placed him among the ablest and most influential members of the old bar. There were but few important suits during the early days of the Marshall bar in which he was not retained as counsel on one side or the other; and he was nearly as well known at the Kalamazoo bar as at home. A defect in his palate rendered his voice husky. But while you noticed this defect as he began his speech, you soon became so interested in what he said that you forgot the defect and only listened to the argument of the speaker. The writer often heard Gordon at the bar and "on the stump," and invariably found that the charm of his reasoning soon made you oblivious to his defective voice. It was a triumph of the art of reasoning over a poor voice. Gordon got his political education at the feet of the Gamaliel of Whiggism at Ashland. The old Whig party in Michigan had no abler and bolder leader than he was. His opponents in the political field were usually the same that he met at the forum—Bradley, Pratt, Stuart, Balch and Van Arman. He was a foeman worthy of their steel in either contest.

ANECDOTE.

Gordon in 1847 was the Whig candidate for Congress against Bradley on the other side. I remember that the news of Bradley's election came to him as he was addressing the jury in a case of importance at Marshall. Everyone present noticed the change wrought on his countenance as it was announced to him that "he was defeated for Congress!" Van Arman was his opponent in the case, and Gordon had been making a most powerful argument against the skilful logic of his wily antagonist. He was nearly half through and seemed determined to win the suit. But no sooner had the news of his defeat reached him than his looks and manner of speaking evinced it. He continued his speech, but there was a perceptible difference between the first and last half of that address to the jury. The inspiration was gone. He lost the case; and his client always maintained that if Gordon had not been told of his defeat until after his speech he would have won the suit. *Two* defeats in one day, both by Democrats, nearly used him up.

EDWARD BRADLEY.

Was born 1808 in East Bloomfield, Ontario county, N. Y. He spent his boyhood on the farm, where he had the benefit of the common school. He attended the academy at Canandaigua for a short time. Here he made, for the time, rapid progress in his studies, and caught the spirit, in this seat of learning, that stimulated him to higher attainments in knowledge in after years. At twenty-eight he was appointed Associate Judge of the Common Pleas Court in Ontario county. In 1839 he came to Michigan and began the study of law in Detroit, completing the same with Gibbs and Sanford in Marshall. With them he began his practice. He was a member of the Michigan Senate in 1842; elected to the lower House of Congress in 1847, and died in New York city while on his way to Washington. Edward Bradley possessed rare natural gifts, was eminently social and had ready wit and humor. Although limited in his early education, he had by study made high attainments in law. Self-made men are the strongest men, because they learn how to use their education in getting it. The value of learning is in knowing how to make the best use of it. The same is true of genius or talent. Bradley had chosen the profession for which his genius best fitted him. And in that profession he wore the highest honors. He had a firm will, indomitable energy, and in every inch of his being was a pioneer.

As a speaker he was earnest, impassioned, with the rare talent of

inspiring an audience with his own enthusiasm. He had an intuitive perception of the avenues for reaching the sympathies and feelings of his hearers. Here lay the source of his great success as a public speaker—of his great power in swaying the multitude. In hight he was about five feet ten, well proportioned, had a fine eye, light complexion, and a curly, bushy head of brown hair. There was a modest, unstudied ease about his manner—an air of *bonhomie* that won his way among the masses, with whom he was always a great favorite. The humorous stories and anecdotes that he told with such *riant* effect, not only enlivened but strengthened his speeches. He could make them powerful agencies in carrying the crowd. His face had a natural reading, or, as the deaf man said of Garrick, "his face is a language." His conclusions were so striking, his descriptions so perfect, his objects so ludicrously exposed to view, that gravity was out of the question. It was Hogarth acting and *describing*, not drawing his pictures. Bradley had all the elements of the orator; he was logical, argumentative, richly endowed with that regal faculty, the imagination, fluent speech, and, says Senator Stuart of Kalamazoo, "in wit and ridicule I never knew a man who could equal him." He was the orator of the pioneer epoch, the most eloquent one during the best days of the old democratic party in Michigan Thoroughly read as a lawyer, deeply versed in political lore, extensively acquainted with the varied topics of the day, and gifted with the power of improvisation as a public speaker, he had no equal in addressing a public gathering, especially a gathering of democrats. I never listened to a man who was so perfect a master of the art of public speaking. It seemed to be a natural gift. Called out at any time, he came before the people unaided by a scrap of manuscript, and began his speech as readily as if his subject had been the study of a lifetime. He appeared never to want a word, or to recall one. They came as naturally as notes to a bird. He said the right thing to begin with, and every sentence he uttered seemed to come readily into its proper place, as an outgrowth from his subject, until they were all fashioned into that perfect thing of its kind, a full rounded speech. His diction was easy, clear and sparkling as a New England trout. It was enlivened by wit, made keen or severe by ridicule, or widened out into broad sympathy with the masses, or, rising with the occasion he would, in an eloquent appeal, carry the multitude to the highest pitch of enthusiasm.

ANECDOTES.

Let it be known that "Ed. Bradley was to speak" in any part of the

country and the people turned out *en masse*. If the anecdotes and witty things that abounded in his speeches were gathered they would fill a vol ume. We have space only for a few. Who of the old residents will ever forget his story of "the old man in Ontario" who once voted the Whig ticket, and the next day, goaded by his sins, bought half a dozen sperm candles, took them home to light them and sit up and hate himself by them."

In a suit tried before Judge Ransom at Marshall, a young lady sued a bachelor for breach of promise of marriage. Bradley defended the bachelor. The nature of the suit gave him a fine field for the display of his wit and drollery. Senator Stuart says that Bradley's speech at this time was equal to the celebrated one of Charles Philips in the case of Blake vs. Wilkins. Judge Ransom laughed at his sallies of wit till his sides shook, and the whole court-room was convulsed with his wonderful power of humor and ridicule. The changes he wrung o'er "Hepsey,' the young lady's name, added an indescribable mirthfulness to the speech. Bradley won the suit, and it was said mainly by the effect of ridicule and droll humor on court and jury. This case was one in which ridicule, or the art persuasive, could be used as a legitimate weapon, and perhaps was the most effectual one for the occasion. In such a field Bradley had no rival. There was not a member of the old bar who could so "steal away the technical heart of the stern judge, and weave seductive tales in the honest ears of sworn jurymen."

In 1844 the Whigs had a mass meeting at Marshall. The next week Gordon, too full of Whiggery to stay at home, came to Kalamazoo and made one of his most telling speeches. In it he gave a glowing description of the monster mass meeting of Whigs at Marshall. This aroused the jealousy of the Kalamazoo democrats, and Bradley was sent for. He must come and answer Gordon. He came. The meeting was held in the old court house. Gen. H. H. Comstock presided; and Geo. Winslow sang his famous song "Old Roanoke." As Bradley came forward he was greeted with thundering applause. He never was in finer spirits. As he began to speak we could see the *gaudid certaminis* (the joy of battle) beaming from his face. Nothing could equal his speech in trenchant logic, ridicule and burlesque. It seemed that the most fitting illustrations came just as he wanted them. He quoted Scripture, Shakspeare, Jefferson and Tom Moore. The shafts of logic and arrows of rhetoric flew thick on every hand, till Whiggery, like a huge elephant, bristling with them, staggered and fell. Gordon was answered. But the *coup de grace* of his speech was his description of the great Whig

mass meeting at Marshall. We can only give the closing sentence: "Fellow citizens, I was there, and saw the entire Whig procession, and it was large! Why, counting all that were there, Whigs, native Americans, old men, women and children, strangers and stragglers, I have seen funeral processions larger, but none ever so mournful!"

ABNER PRATT.

(See biography in Part II.)

Abner Pratt held a prominent rank in the Calhoun County bar. He was a man of peculiar traits of character. His views, impulses, likes and dislikes were of the most decided kind and assumed control of his conduct. He gave his whole energy to whatever principle or policy he espoused. This made him a bitter opponent, or an unflinching friend. He could not do things by halves. He would have been a hypocrite to himself had he held in check opinions or views when their avowal was demanded. There was no compromise in him. He always had the courage of his opinions, and gave them without stint on every occasion. He probably never uttered a doubtful sentiment in his life, or took back one he had uttered. His power over the masses was great because they saw that his whole soul was in his work. As a speaker he was argumentative, and often vehement, while his severity of expression frequently detracted from the effect of his logic. When assailed he was acute in discovering the faults of his foe, and delighted in exposing them with bitterness. This made him dreaded as an enemy. As a judge on the bench he was prompt, decided, and fond of dispatch. He cleared the calendar of the Kalamazoo court for the first time since its organization. As he knew what work was, he knew how to keep these crafty disciples of Coke and Littleton at their legitimate business. His perceptions of justice and equity in a given case were almost intuitive, and always very clear. It was often said that an off-hand decision of Judge Pratt was nearer right than the studied opinions of other judges. He was educated in the school where Lincoln, Douglas and Greeley graduated. Being a man of keen observation he had acquired that kind of learning that sharpens the wits. He was a man of commanding appearance, and had in him much that made up the character of Gen. Jackson. In temper, iron nerve, moral courage, and faith in democracy, he and the hero of the Hermitage were kith and kin. A self-made man, he was unincumbered by the formalities and stiffness often engendered by the training of the schools. He was ready equipped for almost any public occasion. Sarcasm was a trusty weapon in his armory, but invective—that "javelin

of rhetoric"—was his keenest lance, and those who would know how he gave it point, should have seen him when fully aroused in debate before the bar, at the hustings, or in the halls of legislation.

ANECDOTES.

While Pratt was examining a witness in a trial at Marshall, he could get no definite answer. The question was repeated—the witness, who was a prominent member of the bar, did not remember. "Don't *remember* such and such facts?" "No." "Well by ——— I do!" exclaimed the exasperated lawyer.

PRATT AND THE ABOLITIONISTS.

Pratt hated abolitionism as John Knox did popery, and always went armed to battle it on every occasion. Nothing daunted him in this controversy. If circumstances were in his way so much the worse for circumstances. Rev. Mr. Cleaveland preached this political heresy in Marshall. Pratt was aroused and, like "old Put," seized his gun—so to speak—and started out after this abolition "wolf." He assailed him the first chance he had in getting before the public. Cleaveland came to Battle Creek and preached the "heresy" there. The excited democrat tracked him down to that place, and in one of his bitter pro-slavery onslaughts, assailed this disturber of the public peace again. In this fight he gave no quarter. At such times, Pratt, like Tristam Burgess, had no humor, "but an infernal sarcasm."

PRATT AND DR. LAMBORN.

In 1848 Pratt and Hughs were at Cassopolis looking up testimony in the "Kentucky Slave Case." Geo. B. Turner, of Cassopolis, was assisting them. Pratt, always an inveterate joker, had at this time played several severe ones on Hughs. One day Turner espied Dr. Lamborn in the streets. Dr. Isaac Lamborn was learned and erratic, and keen in analyzing character. Politically he hated Judge Pratt, although he had never met him. Turner seeing a "good thing" ahead invited the Doctor into the office. Pratt was lying on the lounge in the back part of the room taking his ease. "Now," says Turner, "Dr. Lamborn, I would like to hear your opinion concerning three prominent democrats of Michigan. First, what do you think of Judge Ransom?" Doctor—"What do I think of Epaphroditus Ransom? I will tell thee. He is not a great man; but I think him an honest one, and a good judge. In politics he is a mere boy." "What of Judge Felch?" "Alpheus Felch has proven himself to be an excellent judge. He was a man of much

culture but too honest for a politician." Turner—"Now Doctor, what is your opinion of Abner Pratt, of Marshall?" Doctor—"Well I will tell thee (raising his voice and accenting as only the Doctor could), when Abner Pratt was born, they were destitute of *souls*, and they gave him a *gizzard*." At this point Turner and Hughs became convulsed with laughter. The Doctor looked first at them, then at the stranger on the lounge, who was getting red in the face and seemed to ask what this boisterous merriment meant. At last Turner, sobering down, said: "Doctor Lamborn, permit me to introduce you to Abner Pratt, of Marshall." Then it was the Doctor's time to get red in the face. But he proved equal to the emergency. Extending his hand to the Judge, he remarked: "Abner Pratt, what I said of thee I only meant *politically*." The Judge swore *some*, but the stern features finally relaxed, and he acknowledged "beat." During the rest of their stay in Cassopolis, Hughs was master of the situation. This is substantially as Geo. B. Turner gave it to the writer.

THOMAS B. CHURCH.

Thomas B. Church was born in Dighton, Bristol county, Mass. Graduated at Trinity College, Hartford, Conn. Studied law at Marshall with Gordon & Woodruff, 1839,-'40-'41; and was licensed to practice in the Kent County Circuit Court at Grand Rapids, where he early removed and where he has since lived. Mr. Church says: "I was not really a member of the Calhoun county bar; while in Marshall acted as clerk and agent principally." But as he first located in Marshall, and as he was so well known there, we give a sketch of him here. He, as I remember him, was tall and commanding, evincing the man of intellect and thought. He was known as a lover of books. His attainments in science and literature are of a varied and extensive range. His public efforts, both at the bar and on the rostrum, have been marked by occasional exhibitions of extraordinary power, with passages of thrilling eloquence. Mr. Church has ever been a man of social and genial turn of mind, but of a lymphatic temperament. Hence his interest has not been easily aroused, his sympathies awakened, or his enthusiasm kindled. As a natural consequence his public efforts have been quite unequal in their effect and power. The first half of his speech may be dispassionate, or cool logical argument. But if his feelings were warmed to the subject, his action became impressive, his words, animated with intense thought, came with increasing force, until they flowed with the resistless power

of a tornado. His best efforts were born of great occasions. He is now living at Grand Rapids, and is about retiring from active public life. The old veteran lawyer and politician, were he inclined to use the pen, could give many valuable and interesting reminiscences of his forensic and political contests, during the forty years of his professional career in Michigan. He, as a lawyer, has been equally able and successful both before court and jury.

JOHN VAN ARMAN.

John Van Arman came, when a youth, from the Hudson river country, I believe, near Plattsburg, N. Y., to Marshall. He had attended, for some time, an academy in his native town. He was of German-French descent, and inherited the logic of the one nationality with the versatility and enthusiasm of the other. His command of language was copious; his delivery fluent, impassioned and often both persuasive and eloquent. His skill in the use of words, especially the adjective, was remarkable. He could "drive a substantive and six" in a style that turned his rhetoric into trenchant logic. At the bar and on the rostrum he exhibited alike a wonderful power of irony and withering sarcasm. His bitterness of invective was often unsparingly used in those hand to hand fights with opposing counsel, or toward an obdurate witness at the bar, or a political opponent at the hustings. This severity of expression sometimes detracted from his public efforts. He was fully equipped for a legal or political contest. There was no weapon known in forensic strife, or in political battle, that was lacking in his "repertory of debate." Adroit, tactful, cool and self-poised, a keen and skillful debater, ready for the "occasion sudden," he was sure to command the eager attention and admiration of his audience. He had almost absolute sway over a popular assembly. Van Arman seemed to possess the lawyer's art by natural instinct. He evinced that art in a masterly degree in fitting a case for trial. No one could surpass him in training witnesses for their parts in the court room, or in managing them when on the witness stand. And he was equally skillful in handling witnesses on the other side. He sometimes made them more serviceable than his opponent did. The old *habitues* of the court room enjoyed Van Arman's conducting a trial as eagerly as a play in the theater. The examination of witnesses is usually the dullest part of a trial to the spectators. But they would "go over to the court room" to hear him in the examination of witnesses, as well as to hear him "sum up the case." He was a superb trial lawyer, as he had the love

of contest in him. The most valuable attainment of a lawyer is the art of asking questions. The world has had but one master of this art—Socrates—and although he has had no successor, the legal fraternity has produced the only proficients in that art, or the best we have. And among them Van Arman held a high rank. His impromptu speeches to the court, on some point of evidence, were masterpieces of their kind. And in those close encounters with his opponents he showed his rare powers as a debater. In this arena he was a dextrous Saladin, armed with keen analysis, legal acumen, and ready wit, any one of which he wielded with telling effect. We said that in "trying cases" he held the crowd like an old player. He did. For from the time the case was called, to its close, Booth, in this court drama, appeared in every "act," and, in the last scene he gave a grand summing up of the whole performance. Van Arman was not merely a lawyer. If he excelled at the bar, he was just as able and eloquent at the hustings, or on the platform, discussing temperance, education, or any of the important questions of the day. He was one of the ablest democratic orators in Michigan. His address at Battle Creek to the volunteers about to go to the Mexican war under him as Captain, had the bugle blast of military ardor and eloquence in it. By the power of his temperance logic and oratory he twice closed up the liquor saloons in Battle Creek, and then did the same thing for the people of Augusta. For many years he has lived in Chicago. He has attained the foremost rank as a criminal lawyer.

HENRY W. TAYLOR.

Henry W. Taylor, another member of the old bar, came from Canandaigua some time in the thirties, and after practicing in Marshall a number of years, returned to his old New York home. He was a good lawyer, but was too much of the old style gentleman to stand the "rough and tumble" of a new country.

DAVID L. JOHNS.

David L. Johns from Ontario county, N. Y., came to Marshall in 1838 and also returned after a few years' sojourn in the West.

There were two brothers by the name of WILLARD, who about 1839, came to Marshall from Oneida county, N. Y. They were called promising lawyers. They died a few years later in Marshall.

WM. BROWN, an able lawyer, is the only member of the old bar, I believe, now living in Marshall.

JOHN S. CHIPMAN,

Of the St. Joseph County Bar.

John S. Chipman was born about 1801, in Birmington, Vt., where he was reared and educated. I think his education was classical. He must have been forty years old when, in 1838, he came to Michigan, settling in Centerville, St. Joseph County. He was a member of our Legislature in 1842, and elected to Congress in 1844. At the expiration of his term in Congress he located at Niles. Sometime in 1849 or 50 he removed to San Francisco, Cal., where he died some twelve years later. Says S. C. Coffinbury, of Constantine, from whom I get most of this sketch:—"Mr. Chipman was a remarkable man. In person he was tall and straight: above six feet high and slender. His head was large, complexion very dark, hair black, straight and thick, forehead low and broad; his eye dark and piercing; his appearance was that of an Indian Sachem." You will see at once why he was universally called "Black Chip." "He was a natural orator. His presence was commanding and impressive. His oratory was more forcible than winning; his metaphors and figures bold and clear but coarse and impractical. He was apt to lash himself into a fury of eloquence, and, like an angry lion, lacerate himself and his auditors by his own violence of language, of which he had great command in contentious debate. He was quick tempered and impatient under antagonism." His words conveyed not only ideas but feelings likewise; so he was wont to inebriate himself, if not his listeners, by means of passionate language. "In private intercourse Chipman was a man of great dignity and courtesy, until his habits of life became impaired by his immoral conduct. His legal education was good; he ranked high as an advocate, but as an orator his powers were more versatile. He tried cases with a good deal of legal ability, and as a counsellor stood high with members of the bar. He became a politician and a democrat from conscientious convictions, and his ascendency as a politician was marked by his declination as a lawyer, as well as morally and socially." From the late Judge F. J. Littlejohn I received the following estimate of Chipman. "He was a man of strong elements of character. His notions were often erratic and visionary. His impulses gave the hue and complexion to both motive and conduct. His eloquence before public assemblies was at times of a high order; but its effect was frequently obscured by reckless assertions, and inconsequent deductions. His moral faculties were not properly developed." This portraiture agrees substantially with that drawn by Mr. Coffinbury. Chipman had in him all the passion and euthusiasm of the orator. Listening to one

of his eloquent speeches was like reading from one of Cooper's novels. You were moved by the startling incident, grand description, dauntless spirit, and thrilling passages and scenes in which the speaker seemed the hero in real life. Chipman had something of the stern bearing and invective of Chatham; something of Burke's love of the sublime and grandeur of description; combined with these were the immoralities of a Wilkes.

ANECDOTES.

I was in the democratic convention at Kalamazoo, in 1844, that nominated "Black Chip" for congress. After the nomination he was "called out." As he stepped upon the rostrum and looked over the convention that had so honored him, he caught the inspiration for the occasion. In his speech he defined liberty. As the thought occurred to him his face lighted up, and who that then saw him can forget his words—look—*gesture*, as he exclaimed—"Whence came liberty?" A pause, as he looked upward, and, in language as poetical and grand as Drake's on the "Old Flag," he gave the answer.

He was greeted with a tempest of applause as he finished his speech, and thanked the convention for the great honor they had conferred upon him.

His misfortunes in speech were sometimes more than metaphorical. Where he said in congress that—"education was at war with democracy!" the expression was caught up and repeated all over the land, and soon came echoing back from "across the waters." Blackwood's Magazine, never at any time liking us, after giving a graphic description of our Congress, in a critical paper on "The Model Republic" and, after enumerating the leading statesmen in our national council, Webster, Clay, Calhoun, John Quincy Adams, the Nestor of the model republic, and others, the article closed with the dramatic performance of a rude western member, who exclaimed, in a grandiloquent speech,—"Education is at war with democracy!" To which the editor added—"*magnifique—superbe* —PRETTY WELL!"

No one who ever saw "Black Chip" fully excited by the enemy's fire in debate, can ever forget his remarkable appearance. At such times he was imperious, overbearing, and defiant. I saw him in such a mood at the Centerville bar, in 1848, Judge Osborne on the bench. H. H. Riley of Constantine, then "on his first legs" as prosecutor for St. Joseph county, had taken a bold position against Chip, in a suit they were trying. At this "Chip" in all his stern dignity addressed the court on the

law in the case. Riley ably maintained his position. The old barrister grew furious at being held in check by this "stripling in law," and turning to the court said—"Am I, your honor, an old veteran, grown gray at the bar, to step aside and yield to the dictum of this upstart?" Nothing could equal the look of mingled scorn and defiance with which he said this. But Riley was not cowed by it. He then showed that he had in him the material of which lawyers are made. And when he thus defiantly bearded the old lion in his den, we thought he had won his "professional spurs" in thus withstanding the most formidable foe he would ever meet at the bar of Western Michigan. Riley, I think, gained the suit.

'Tis said that the lawyers who lost their cases in court, were accustomed to go over to the nearest tavern, and "take it out" in swearing at the judge and abusing the opposing counsel. Black Chip, when he was defeated in court used to take it out "by swearing at the judge" on the spot. He hated Judge————. At the close of a trial before him at Centerville, after having worked himself into a frenzy of hate, he took a stand at the door of the court room, and waited for the decision from the bench. The decision came adverse to him. He, on hearing it, gave a fierce glance at the Judge and exclaimed in bitter, sarcastic tone—"the *dev-il!*" and instantly walked out of the room.

The following will illustrate his impatience. An old man remarkable for his piety and parsimony consulted Chip professionally. Getting the pith of the matter he informed the old gentleman that he had no merits in his case. The latter still argued that he had a fair chance. Finally, losing, all patience with this would-be client, he said sharply—"I have told you what the law is, and that you have no cause of action, and have told you truly. Now, d—n you, give me ten dollars and I will manage as you want it, and commence suit for you."

KALAMAZOO COUNTY BAR.

This bar was distinguished for its able lawyers. I have often seen its leading members pitted against those of the Marshall bar, as well as those from the Allegan and St. Joseph county bars. This old forum has been the arena where many of the most important trials in Western Michigan have taken place. Here Gordon, Bradley and Pratt, have met Stuart, Balch, Belcher, Clark and Mower in legal conflict. Here Littlejohn, "Black Chip," Bacon and Dana have broken many a lance with some member of the old bar. The surviving members of the bar are Stuart, Balch, Wells and Breese.

THE PIONEER LAWYERS.

The lawyers who came in the territorial days were men of adventurous spirit and sound legal ability. John Hascall came from Genesee county, N. Y., in 1830, locating on Genesee Prairie, near Kalamazoo. He was an able and successful lawyer in New York. He never practiced much here. Died in 1853. Lyman I. Daniels, from Otsego county, N. Y., settled in Schoolcraft in 1813; practiced there a few years, went west, and died in 1838. Jeremiah Humphrey, from Conn., located also in Schoolcraft in 1832; was a good, accurate lawyer; went west and died in 1849. Cyrus Lovell, from Vt., settled in Kalamazoo in 1832. Was the first lawyer there. He removed in 1836 to Ionia, where he has since lived.

JUDGE EPAPHRODITUS RANSOM.

He was born in 1799, in Hampshire county, Mass. Removed when young with his father's family to Windham county, Vt. Was educated at Chedir academy; read law with Peter R. Taft. He graduated from the Law School at Northampton, Mass., in 1825, and went into practice in Windham county. He was twice elected to the Vermont Legislature Came to Kalamazoo in 1834, becoming a law partner with Charles E. Stuart. In 1836 was appointed Associate Judge of the Supreme Court, and afterwards Chief Justice of the Supreme Court, which office he held till 1848, when he was elected Governor of Michigan. From 1836 to 1848 he was *ex-officio* Circuit Judge of the Western District in this State. Was a member of our State Legislature in 1853–'55. Removed to Kansas in 1856, having been appointed Receiver of U. S. Land Office located at Fort Scott, where he died Nov. 9, 1859, aged 63 years. Judge Ransom was a man of great probity. His perceptions of equity and justice between parties were clear, and upon them he generally relied. Upon the bench his practical common sense, aided by his desire to subserve the substantial ends of justice, were valuable supports. It was largely upon these qualities, and upon his clear knowledge of law, that he ranked so high as an upright judge. Hon. L. W. Lovell, of Climax, says of Judge Ransom: "I recall his majestic appearance, the dignity with which he presided on the bench, which never left him in any of the walks of life. The people of Kalamazoo county early came to love him for his amiable and blameless life; to esteem and honor him for his strong common sense as a man, his ability and uprightness as a judge.

And they can point with pride to the example of their first circuit judge under the state constitution, as worthy of imitation by his successors in time to come."

CHARLES E. STUART.

Charles E. Stuart was one of the ablest and most eloquent members of the old Kalamazoo bar, and stood in the front rank of the eminent lawyers of the State. He was born November 25th, 1810, at Canaan Corners, Columbia county, N. Y. His father, some few years later, removed to Waterloo, Seneca county, N. Y., where Charles begun and finished his educational course, taking his degrees in the three R's of the common school curriculum, with the additional attainment of grammar. This is all he ever got from the schools. He is pre-eminently a self-made man. At the age of nineteen he hung up his hat as a student in the law office of Birdsall & Clark, of Waterloo. He was admitted to the bar in Seneca county. In 1835 he came to Kalamazoo, Michigan, and there began his career as a lawyer. Was elected representative to the State Legislature in 1842; representative to Congress in 1847-9 and 1851-3; and to the United States Senate in 1853, serving a full term. While a member of the House he was instrumental in procuring a law of incalculable value to Michigan industries. A distinguished associate member of the Senate has said that Mr. Stuart was the ablest presiding officer of a deliberative assembly that he ever knew. "I never had time," says Senator Stuart, "to read books when I was young, and since I began my profession I have been too busy to read outside of my practice." He likes books that treat of scientific subjects, philosophy, logic, poetry and music. Of the latter he is passionately fond. Burns is his favorite poet. It has been said that he never made a speech in which he did not quote his favorite bard. Stuart's professional life has been a school in which he has been an apt and diligent pupil. He reads a book rapidly, if you would call it reading; glancing at the top of the page and running his eye down it, yet he has gathered its whole meaning, without the labor of getting it line by line. As was said of S. S. Prentiss, "he read two pages at a time, one with his right eye and one with his left." And, like Prentiss, he was a lawyer of quick perceptions, of clear ideas upon any case in hand, while no one equalled him "in the faculty of thinking on his legs." He had a fine command of language, and a charm in delivery that sent each word with its distinct message to his hearers. Speech has three parts—words, look and tone; to the parts of oratory, gesture must

be added; and in Stuart's gesture was an art carried to its highest finish. There was talent in his manner of speaking; there was argument in his diction—in the clearness of his utterances—given with an impressiveness that stamped them on the memory. And the effect of his words, and of his logic was improved by a natural arrangement, and the effect of his rhetoric by a natural style. His personal appearance was faultless; he was at once commanding and graceful; just above the medium height and compactly built. A fine eye lighted up a classic head and face. "His voice was both clear and full; its lowest tones distinctly heard in cadences of peculiar charm, while in its highest compass it captivated all with a Ciceronian flow." There was a persuasive eloquence in the movement of his lips. This was before the day of the *moustache*, or the habit of public speakers wearing a hirsuite mask over the mouth, concealing the expression of the lips, the smile and the entire facial language which constitutes the charm and soul of delivery. There was something peculiarly pleasing in Stuart's countenance and features, "something indicative of intellect, humor and good sense." And in support of all these merits was a suavity of temper that seemed to set at defiance all attempts to ruffle or discompose it. His cause or client never suffered from his rashness, legal tricks, or abuse or severity to a witness or an opponent, so much in vogue among lawyers now-a-days. For in the hottest contests with his professional foes he never lost poise or temper, but even when hardest pushed evinced a moderation that was wonderful. Hence as a public speaker he always went at a premium. It has generally been acknowledged that, in those forensic contests with his oppo nents, he wielded a blade whose ring and gleam and cut proved it to be of Damascus steel. He never used manuscript or notes. In the most complicated trial his retentive memory held all the evidence. As a debater Stuart approached the question by a natural reasoning. He was adroit in shifting his ground when attacked in time to avoid a blow from his enemy, while his keen glance detected any defect in the armor of his foe, and his ready blade soon found the weak part. And most valuable of all, as a debater, he had the intuitive perception to see the pith of the matter at issue, the courage to seize it, and the intellectual power to maintain his possession. High intellectual endowment, keen perception and courage, naturally qualified Charles E. Stuart for the highest attainments at the bar or in the political arena. In his arguments before the court or jury, on the stump, or in legislative halls, he has evinced wonderful fertility in resources, and has always proved himself equal to the occasion. His style of speaking, his logic, and his rhetoric are so pecu-

liarly his own that they have become classic to his hearers. Those who have thought Stuart a mere jury lawyer little understood him. He was strong both before court and jury. He knew how to reach both, for he was a logical reasoner as well as a successful advocate. Mr. Stuart on account of ill health some number of years ago retired from practice. His mind is yet clear and vigorous. Like Fox, in his retirement he gives himself to his books and friends. He is the social, genial gentleman at home; a fine conversationalist and an interesting *raconteur*.

ILLUSTRATIVE INCIDENTS.

In the noted malpractice case of Beals vs. Dr. N. M. Thomas, tried at Kalamazoo before Judge Ransom in 1844, Stuart was at his best. A young daughter of the plaintiff had injured her arm. Dr. Thomas treated it as a fracture; Beals claimed that it was only a dislocation at the elbow, and brought suit to recover damages as the arm was yet partly useless. The jury was an unusually intelligent one. When a trial of importance was on, the students of the "old Branch" used to take some text book and go over to the court room, and "hunt out their lessons" in the dull intervals of the trial. Although I had heard Stuart in most of his great efforts at this bar, yet at this time he surpassed himself. Always admired as a model orator by the students, here he was to us a *Cicero in real life*. His power over that court and jury was a masterly achievement of argument and oratory. He often had them in tears, and we remember that the sturdy old pioneer clergyman, Rev. Mason Knappen, one of the jurors, *cried like a child*. The whole court and attendant crowd hung with breathless attention on every word he uttered. And when he had finished, it seemed to us that there were no higher forensic honors in his profession for him to win; and that he could then retire with fame enough. He won the case. His opponents were N. A. Balch and James Wright Gordon. As this was a case of malpractice the highest surgical authorities in the west were summoned as witnesses. All the noted physicians in Central Michigan were summoned, besides Dr. Zina Pitcher of Detroit, the learned and erratic Dr. Lamborn, Prof. Meeker of the La Porte school, and President Brainard of the Rush Medical College of Chicago, were on the witness stand.

Fitch and Gilbert, of Marshall, attached Judge Lee's goods for debt; and in taking out the attachment Gilbert made a great mistake in swearing that Judge Lee was about to defraud them of the debt in

removing his goods. This was not true; and Pratt, Lee's law partner, had Gilbert indicted for perjury. The case now became serious, as Pratt's hatred of Fitch, who was a radical abolitionist, now took a more violent political turn. Gilbert, alarmed, speedily secured Gordon, Bradley, Van Arman and Stuart as his counsel. Bradley and Gordon withdrew, and Van Arman, whom all wished to retain, was considered too aggressive to get along with Pratt, for the case was *lost* unless Pratt was *pacified*. It was an admirable stroke of policy in giving Stuart the management of the suit. To add to the difficulty the "sworn twelve" were known to be bitter democrats. Pratt seemed to have the case entirely in his own hands, and thoughts of the penitentiary loomed up in Gilbert's mind. Stuart's defense was a masterpiece of legal tactics in managing Abner Pratt when mad. He based that defense on the proposition that his client did wrong in attaching Judge Lee's goods; that Pratt did right in indicting Gilbert. But the question with the jury was —did Gilbert *intend* to commit perjury? To convict him they must have proof of that. There was no proof that he even intended to swear false, or to misinterpret the case against Lee. It was a mistake, a blunder of an impulsive young man, with no intention of committing a legal or moral wrong. Before he had talked twenty minutes he had judge and jury crying. Had that speech been preserved, says one who heard it, it would have been called the greatest forensic achievement of his life. Mr. Stuart himself is inclined to this belief. Stuart's style was eminently persuasive. It enabled him at this time to enforce the essential facts in the case with a pathos that carried judge and jury. And it set at naught the idea that his strength lay mainly with the jury, and in the blandishments of his oratory. This would excite laughter in those who knew Judge Pratt, to think that the tactful blandishments of oratory could move *him*. No, the reverse of this was true. There was so much hard sense, sound logic and law, in the defense of his client, that the Achillean wrath of Abner Pratt was subdued by it, court and jury carried, and Gilbert acquitted.

This case reminds us of the fact that truth and justice often suffer in the court room, by the harsh and overbearing manner of practitioners toward opposing counsel, or adverse witnesses. Many lawyers show a lack of common courtesy, as well as common sense, in the management of their suits; and if they only knew how much they go at discount, for this very reason, with judge and jury, they would not only mend their pleas, but also their manners, at the bar. We think the old lawyer clung closer to the law, and the facts in the case, than their successors at the

bar do. The present practice is founded too largely on the Jesuitical policy of using any means "to win the case."

Stuart and Balch stood at the head of the old Kalamazoo bar. As a political speaker Stuart was widely known. "Charley Stuart" was a name as familiar as household words throughout our entire western border. He and Edward Bradley were two of the ablest and most eloquent political orators in Michigan.

NATHANIEL A. BALCH.

Nathaniel A. Balch, one of the ablest lawyers of the Kalamazoo bar, was born January 22, 1808, in Athens, Windham county, Vt.; he fitted for college at Chester Academy, and graduated at Middlebury, 1835. Was principal of Bennington Academy two years; read law with John S. Robinson, of Bennington. Removed to Kalamazoo, Mich., 1837, where he became a law student of Stuart and Webster. Had charge of the Kalamazoo Huron Institute some time, and was principal of Marshall College two years. Was admitted to the bar in 1842. Was Prosecuting Attorney for Kalamazoo and Barry counties. Member of the State Senate in 1847. Mr. Balch is an able Greek and Latin scholar, and has been a diligent student in acquiring knowledge during his entire professional life. His broad and thorough reading has fully equipped him for the discussion not only of law questions but for all others. Consequently at the bar he was a formidable opponent—one strongly entrenched in argument and very difficult to defeat. He has been called the "metaphysician" of the western bar. A close reader he thought over his cases profoundly. He had the faculty not only of working up a strong case for his client, but of so identifying himself with his client's cause as to make it his own. His language was good, his address forcible and commanding; for behind all his legal learning and attainments you recognize the intellectual power of the man. Mr. Balch when fully awakened on a question was a master in argument. He brushed aside technicalities when in his way as mere cobwebs; but, on the other hand, made them strong as iron if his case needed their support. During forty years of practice he has been counsel in most of the important trials in western Michigan. Mr. Balch is an able impromptu speaker on most any subject, holding the closest attention of his audience at all times. The same may be said of him as a conversationalist. He can draw from his rich stores of knowledge something to entertain or instruct any company. He has been president of the Kalamazoo bar association from its earliest organization.

ELISHA BELCHER.

Elisha Belcher was born in Rhode Island in 1800; came when a child to Massachusetts, and when a young man removed to Ohio. He was a student in Kenyon College, where he got enough of the classics to aid him in his profession in after years. In 1826 he came to Ann Arbor, Michigan, and later moved to Ionia. He must have picked up his profession somewhere between Massachusetts and Ionia, for his name is on the records as attorney in some of the early cases in the latter place. Belcher came to Kalamazoo in 1834 and soon became one of the leading lawyers of the west. He removed to Otsego in 1850, and died there in 1852. He was a man of close observation, and an apt student in the common school of life. Having worked up from the ranks of hard toil he had retained the plain manners of and the close sympathy with the class from which he sprung. And when he became an able lawyer his social habits made him hosts of friends. His unadorned speech, sincerity and candor won their way to the hearts of the jury, and were potent in establishing his own convictions upon their minds. Belcher had a large, muscular frame and great vigor of body and mind. A clear, logical reasoner, his argument was marked more by strength than beauty of diction. And when he had once presented his case to the "sworn twelve" if the verdict was not in his favor his defeat never hurt him; for as a lawyer and an honest man he stood high with court, jury and people. It is sad to reflect on what Belcher might have been. There was enough native talent, legal ability, solid attainments, genial humor and sterling manhood enslaved by the habit of strong drink, to have placed him in the front rank of the Kalamazoo bar, and to have made him distinguished among his fellow citizens and in the councils of the nation. Belcher's office was a pleasant resort for the branch students, in whom he was always interested, and loved to give them advice in their studies. Many delightful reminiscences has he given them from his life in Kenyon College. And speaking of his habits, he freely acknowledged that he was a victim to "rum," and would warn them *never to take the first glass.* That was their only safety. Kind recollections of the old barrister are yet fresh in the memory of his student friends.

HORACE MOWER.

Horace Mower was born in Woodstock, Windsor county, Vt. He graduated at Dartmouth college, read law with Hon. Andrew Tracy, of Woodstock, and came to Kalamazoo in 1838. Was a member of our

Legislature in 1847, and appointed Judge of New Mexico where he served two years. He died December 11, 1860. He had a fine classical education, and was the finest *belles-lettres* scholar in Kalamazoo. He was affable, gentlemanly, social and full of wit and humor. He was an astute lawyer, and in his best days was the pride and ornament of the Kalamazoo bar. As a lawyer he was not as logical, as a thinker he was not as profound, as some of his compeers. But he was endowed with extraordinary tact, and was full of expedient and resource. He was not noted for sustained oratory, but with an occasional burst of genuine eloquence he would carry his audience by storm. His irony and satire were inimitable and often fell with withering effect upon his opponent or an obstinate witness. He was compactly built, of medium size, had an aquiline nose and an eye like a falcon. Was always neatly dressed, walked with an elastic step, evincing the energetic, stirring man. He was quick to see the weak point in an enemy's argument or design, and as quick to give a thrust, which he did so dextrously that surprise and discomfiture came at one stroke. The old Whig party had in him a leader, strong, eloquent and brave. No man in Western Michigan had more influence among the old Whigs than had Horace Mower.

JOSEPH MILLER.

Joseph Miller was born in Litchfield county, Conn., December 13, 1816, and was educated at an academy in that place. Read law with his father. Removed to Kalamazoo, Mich., in 1837, where he was admitted to the bar. Was a law partner with C. E. Stuart for many years. Was made U. S. District Attorney for this district by President Buchanan. He died April 6, 1861. Mr. Miller displayed marked ability in the preparation of his cases; was correct in citations of law, accurate and concise in argument; logical and effective in his brief speeches before the bar. Getting the pith of a client's case, if there was a possible chance for friendly adjustment between the parties he always urged it. How much money and bitter feud "Joe Miller" has saved citizens of this county by such sound advice, who can tell? The old law office of "Stuart and Miller" in 1843 was on the east side of Portage street, Kalamazoo. It was in this office that Joe Miller as the legal vulcan, forged the weapons for his partner, Stuart, to use in combat with their foes in the court room. Let Miller fit the case for trial, and let Stuart present it to the jury, and the verdict of the "stubborn twelve," it was usually thought, would be given in their favor. Miller was a lawyer of

close and profound research. With him knowledge came by analysis and close inductive reasoning. If there was an imperfection in the law, or a flaw in the argument of his opponent his eagle eye detected it at a glance. He excelled in the "weightier matters of the law." He was at first merely a court, but eventually became a jury lawyer as well. As he grew in practice his reading became more extensive till in the zenith os his fame, he was peer of the foremost lawyer in Western Michigan.

DAVID B. WEBSTER came from Vermont to Kalamazoo in 1836. He was a good lawyer and a man of excellent character. He died in 1860. SAMUEL CLARK came from New York to Kalamazoo in 1842. Was an able lawyer and genial gentleman. He died in 1870. EDMUND RICE, of Vermont, another good lawyer, came to Kalamazoo in 1842, and removed to Minnesota many years ago, where he still lives. MARSH GIDDINGS came from Connecticut in 1830, locating on Gull Prairie; was admitted to the Kalamazoo bar in 1841. Was a successful advocate, an accurate lawyer, and a man of high social qualities. He died at Santa Fe, while Governor of New Mexico, in 1875. Of the younger members of the old bar P. W. H. RAWLES, DAVID HUBBARD and SAMUEL A. RICE are dead. J. W. BREESE, the only surviving one of the younger members, is now in successful practice in Kalamazoo.

In the preparation of these reminiscences Senator Stuart, of Kalamazoo has been of great value to me. Having been acquainted with the members of both of these bars he has kindly furnished me with any information I have needed.

PART IV.

THE STATE JUDICIARY.

1835–1884.

CHANCELLORS.

1836. Elon Farnsworth ..... 1842. Resigned.
1842. Randolph Manning ..... 1846. Resigned.
1846. Elon Farnsworth ..... 1847. Court abolished

SUPREME COURT JUDGES.

Under Constitution of 1835.

1836. Wm. A. Fletcher, C. J. ..... 1842. Resigned.
1836. George Morell, A. J. ..... 1842. C. J., Vice Fletcher [July 18, 1843.]
1836. Epaphroditus Ransom, A. J. ..... 1843.
1843. Epaphroditus Ransom, C. J. ..... 1848.
Charles W. Whipple, A. J. ..... 1838. Additional Justice.
1848. Charles W. Whipple, C. J. ..... 1852.
1842. Alpheus Felch, A. J. ..... 1845. Resigned.
1843. Daniel Goodwin, A. J. ..... 1846. Resigned.
1845. Warner Wing, A. J. ..... 1852. Vice Felch.
1846. George Miles, A. J. ..... 1850. Vice Goodwin; died 1850
1848. Sanford M. Green, A. J. ..... 1852.
1848. Edward Mundy, A. J. ..... 1851. Additional A. J., deceased
1850. Abner Pratt, A. J. ..... 1852. Vice Miles, deceased.
1851. George Martin, A. J. ..... 1852. Vice Mundy, deceased.

CIRCUIT JUDGES HOLDING SUPREME COURT.

Under Constitution of 1850.

John S. Goodrich ..... Elected April, 1851. Died before qualifying
Warner Wing ..... Resigned 1856.
George Martin .....

Sanford M. Green.....Resigned 1857.
Joseph T. Copeland ....
Samuel T. Douglass....Resigned 1857.
David Johnson.....Resigned 1857.
Abner Pratt.....Resigned 1857.
Charles W. Whipple....Died October, 1855.
Nathaniel Bacon .....October, 1855, vice Whipple.
Edward H. C. Wilson...November, 1856, vice Wing.
Benj. F. J. Witherell...May, 1857, vice Douglass.
Benj. F. Graves.....May, 1857, vice Pratt.
Josiah Turner.....May, 1857, vice Green.
Edwin Lawrence .....May, 1867, vice Johnson.
George Martin .....(Re-elected April, 1859,) to Dec , 1867.
Randolph Manning.....(Re-elected April, 1861.) Died 1864.
Isaac Christiancy.....(Re-elected April 1865 and 1873.)
Resigned January, 1875.
James V. Campbell.....(Re elected April, 1863, 1871 and 1879.)
Thomas M. Cooley .....(Vice Manning) 1864. Re-elected Ap. '69 & '77.
Benj. F. Graves.....1868. (Re elected 1875.) Vice Martin.
Isaac Marston.....April, 1875, vice Christiancy. (Re-elec. Ap. '81.)

CHIEF JUSTICES.

1836–1882.

1836. William A. Fletcher 1842
1842. George Morell.....1843
1843. Epaphroditus Ransom...1848
1848. Charles W. Whipple....1852
1852. Warner Wing.....1854
1864. Sanford M. Green 1856
1856. Abner Pratt 1857
1858. George Martin*.....1867
1868. Thomas M. Cooley.....1870
1870. James V. Campbell 1872
1872. Isaac P. Christiancy.....1874
1874. Benjamin F. Graves.....1876
1876. Thomas M. Cooley.....1878
1878. James V. Campbell 1880
1880. Isaac Marston..... 1882
1882. Benjamin F. Graves.....
1884. Thomas M. Cooley.....

ASSOCIATE JUSTICES.

1858. Randolph Manning.....1864
1864. Thomas M. Cooley.....1868
1858. James V. Campbell 1870
1858. Isaac P. Christiancy.....1872
1868. Benjamin F. Graves.....1874
1870. Thomas M. Cooley.....1878
1872. James V. Campbell 1868
1874. Isaac P. Christiancy, to Feb. 27.....1872
1875. April 9. Isaac Marston..1880
1875. Benjamin F. Graves.....1882
1878. Thomas. M. Cooley .....
1880. James V. Campbell .....
1882. Isaac Marston, resigned..1883
1883. Thomas R. Sherwood ...
1884. J. W. Champlin .....

CIRCUIT JUDGES SINCE 1857.

(The first figure after the name denotes the No. of the Circuit ; those following, the year the Judge was elected or appointed ; "a" denotes appointed, "r" resigned, "d" died, and "e" elected. When no letter is prefixed elected is meant.)

Arnold, Dan. J.----20, a 1874, e 1875, e 1881
Bacon, Nathaniel----2, 1857, 1866, 1869
Baldwin, Augustus C.----6, 1875, r April 5, 1880
Birney, James----10, a 1861
Blackman, Daniel----2, e November 9, 1869, r November 1, 1872
Brown, Charles R.----9, a 1869, e 1869, r
Brown, Henry B.----3, a 1868
Brown, Michael----14, a 1876, e 1878, r Jan. 4, 1881
Comstock, Darius S.----9, d Feb. 3, 1875
Coolidge, Henry H.----2, a Dec. 6, 1873
Crane, Alex. D----4, a Jan. 7, 1873
Chambers, Fitzwilliam H.----3, a 1879, e 1880, 1881
Dewey, James S.----6, 1867, 1869
Eddie, Clarence E.----12, 1865
Emerick, Frank----26, 1882
Fallass, Silas S.----28, 1882
Fuller, Ceylon C.----27, 1882
Giddings, Augustine H. ----14, a Dec. 8, 1869, 1875, d Dec. 10, 1876
Goodwin, Daniel (Upper Penin. 1857)----11, 1863, 1869, 1875
Gridley, G. T.----4, 1881
Graves, Benj. F.----5, 1857, 1863
Gage, DeWitt C.----10, a March 10, 1880
Gaskill, Silas B.----6, a April 17, 1880
Gage, Chauncey H.----10, 1881
Grant, Claudius B.----25, 1881
Green, Sanford M.----6, 1857, 1863; 18, 1872, 1875, 1881
Grier, Theo. C.----18, 1871
Hart, Henry----21, a 1875, e 1875, 1881
Harris, Edward W.----16, a 1873, 1875
Hawes, Josiah L.----9, a 1875, e 1875
Higby, Samuel----4, 1869, r Jan. 1873
Hopkins, Moses B.----14, 1867, 1869
Hoyt, Birney----17, 1871, 1875
Huntington, Geo. M.----4, 1875
Haight, Samuel D.----19, 1878, d Feb. 25, 1880
Hooker, Frank A.----5, a April 1, 1878, 1881

Howell, Andrew.....1, 1881
Johnson, Franklin.....1, 1868
Judkins, J. Byron.....19, a 1880, e 1880, 1881
Jennison, William.....3, a 1882, e 1882
Joslyn, Chauncey.....22, 1881
Keightley, Edwin W.....15, 1874, 1875
Lawrence, Edwin.....4, 1857, 1863
Littlejohn, Flavius J.....9, 1858, 1863
Lovell, Louis S.....8, 1857, 1863, 1869, 1875
Mills, Alfred J.....9, 1881
Melendy, Richard W.....15, a Jan. 7, 1873
Mitchell, William T.....16, 1869, r Jan. 15, 1873
Moore, John.....10, a 1871
Newton, William.....7, 1881
O'Grady, James.....12, a 1868, e 1868
Patchin, Jared.....3, a 1868, e 1869
Pealer, Russell R.....15, 1881
Pratt, Daniel L.....1, 1869, 1875
Putnam, Worthy.....2, a Nov. 5, 1869, vice Bacon, deceased
Ramsdell, Jonathan G.....13, 1866, 1869, 1881
Russell, F. J.....14, a 1881, e 1881
Reilly, Cornelius J.....3, a 22d Nov., 1875, e 1875, vice Patchin
Speed, John J.....3, a 1881, e 1882
Smith, Andrew J.....2, 1878, 1881
Smith, Perrin M.....2, 1868
Stone, John W.....20, 1873
Stickney, Wm. W.....6, 1881
Sutherland, Jabez G.....10, 1863, 1869
Steere, Joseph H.....11, 1881
Stevens, Henry W.....16, 1881
Taft, Levi B.....6, a 1873
Tennant, William S.....10, a 1874, e 1874, r March 10, 1880
Turner, Josiah.....7, 1857, 1863, 1869, 1875
Tuttle, Jonathan B.....23, 1877, 1881
Upson, Charles.....15, 1869, r Jan. 1, 1873
Vanzile, Philip T.....5, 1875
Walker, Charles I.....3, a 1867
Wheeler, Harrison H.....19, 1874
White, Shubael F.....19, 1873
Williams, William D.....12, 1875, 1881

Wilson, Edward H. C.....1, 1857
Wixon, Levi L.....24, 1879, 1881
Witherell, Benjamin F. H.....3, 1857, 1863
Woodruff, George.....5, 1866, 1869
Woodworth, Wilber F.....10, 1858

JUDGES OF COUNTY COURTS.

Act of Oct. 24, 1815.

BERRIEN COUNTY.

CHIEF.	Appointed	ASSOCIATE.	Appointed
Jehiel Enos	Mar. 4, 1831	Elijah Lacey	Mar. 4, 1831
Daniel Olds	Oct. 29, 1831	Calvin Britain	" " "
Daniel Olds	June 29, 1832	Erasmus Winslow	Oct. 29, 1831
		Erasmus Winslow	June 29, 1832
		Elijah Lacey	" " "

BRANCH COUNTY.

CHIEF.

	Appointed
Silas A. Holbrook	Mar. 22, 1833

BROWN COUNTY.

CHIEF.	Appointed		Appointed
Mat. Irwin (declined)	Oct. 27, 1818	John Biddle	June 10, 1821
Jacques Porlier	Sep. 14, 1820	John Lawe	Sept. 6, 1822
James Porlier	Nov. 23, 1826	Henry B. Brevoort	June 13, 1823
James Porlier	Mar. 3. 1831	John Lawe	Nov. 23, 1826
ASSOCIATE.		John P. Arndt	" " "
Charles Reaume	Oct. 27, 1818	John Lawe	Mar. 3, 1831
Benjamin Chittenden	" " "	John P. Arndt	" " "
Lewis Morgan	Sept 14, 1820	Nicholas G. Bean	Sept. 6, 1834

CALHOUN COUNTY.

CHIEF.	Appointed	ASSOCIATE	Appointed
Daniel G Garnsey	Mar. 26, 1833	Eleazer McCamley	Mar. 26, 1833
		Erastus Kimble	" " "

CHIPPEWA COUNTY.

CHIEF.	Appointed		Appointed
Henry R. Schoolcraft	April 9, 1827	Elijah B. Allen	April 9, 1827
John Hulbert	" 23, 1833	Isaac Butterfield	July 2, 1828
ASSOCIATE.		Bela Chapman	April 23, 1833
Ezekiel Harris	April 9, 1827	Francis Andrain	April 23, 1833

Cass County.

CHIEF.	Appointed	ASSOCIATE.	Appointed
Samuel B. Walling	Nov. 5, 1829	Timothy S. Smith	Nov. 5, 1829
Thomas K. Green	July 31, 1830	Baldwin Jenkins	" "
Joseph S. Barnard	Oct. 7, 1831	Joseph S. Barnard	Feb. 8, 1831
Joseph S. Barnard	June 29, 1832	William Burk	Oct 7, 1831
		John Agard	" " "
		William Burk	June 29, 1832
		James Newton	" " "

Crawford County.

CHIEF.	Appointed		Appointed
John W. Johnson	May 10, 1819	Alex. Simpson (error in name)	July 31, 1830
Joseph Rolette	July 31, 1830	Jean Brunet	" " "
Joseph M. Street	May 14 1831	Joseph M. Street	Mar. 3, 1831
Joseph M. Street	June 29, 1832	James H. Lockwood	May 14, 1831
ASSOCIATE.		James H. Lockwood	June 29, 1832
Nicholis Boilvin	May 10, 1819	Joseph Rolette	July 31, 1833
Francis Bourthellier	" " "	Hercules L. Dousman	Sept. 6, 1834
Joseph Rolette	June 10, 1821		

Des Moines County.

CHIEF.	Appointed	ASSOCIATE.	Appointed
William Morgan	Dec. 26, 1834	Ezekiel Smith	Dec. 26, 1834
Young L. Hughes	May 16, 1835	Young L. Hughes	" " "
Isaac Leffler	Mar. 31, 1836	John M. Forrest	May 16, 1835
		Henry Walker	Mar. 30, 1836
		Arthur Inghram	" " "

Dubuque County.

CHIEF.	Appointed	ASSOCIATE.	Appointed
Thos. McKnight	Sept. 6, 1834	Milo H. Prentice	Sept 6, 1834
Lorin Wheeler	Dec. 26, 1834	Hosea T. Camp	" " "
John King	June 20, 1835		

Ionia County.

CHIEF.	Appointed	ASSOCIATE.	Appointed
Henry Dodge	Oct. 14, 1829	William S. Hamilton	Oct. 14, 1829
Henry Dodge	July 31, 1833	James H. Gentrey	" " "
James H. Roundtree	Mar. 6, 1834	William S. Hamilton	July 31, 1833
John H. Roundtree	Sept. 6, 1834	James H. Gentrey	" " "
		James P. Cox	Mar. 6, 1834
		George W. Jones	" " "

JACKSON COUNTY.

CHIEF.	Appointed	ASSOCIATE.	Appointed
Oliver Russ	June 29, 1832	Wm. R. DeLand	June 29, 1832
		Samuel Wing	" " "

KALAMAZOO COUNTY.

CHIEF.	Appointed	ASSOCIATE.	Appointed
Bazil Harrison	Aug. 17, 1830	Stephen Hoyt	Aug. 17, 1830
		Titus Brunson, (dec.)	" " "
		Caleb Eldred	June 25, 1832

LENAWEE COUNTY.

CHIEF.	Appointed		Appointed
Joseph W. Brown	Nov. 23, 1826	William Kedzie	Nov. 27, 1827
Stilman Blanchard	May 28, 1828	William Kedzie	May 28, 1828
Levi Baxter, jr.	June 25, 1832	Timothy B. Goff	March 6, 1829
ASSOCIATE.		Timothy B. Goff	Nov. 2, 1829
Elisha P. Champlin	Nov. 23, 1826	James T. Borland	March 4, 1831
James T. Borland	" " "	Caleb N. Ormsby	June 25, 1832

MACOMB COUNTY.

CHIEF.	Appointed		Appointed
Christian Clemens	Jan. 20, 1818 Dec. 19, 1826 Mar. 3, 1831	Zephaniah W. Bunce	Mar. 28, 1820
		James Connor	Aug. 23, 1820
		Elisha Harrington	June 19, 1821
		Ellis Doty	Dec. 17, 1825
ASSOCIATE.		Calvin Davis	Dec. 19, 1826
Daniel Le Roy	Jan. 20, 1818	Gideon Gates	" " "
William Thompson	" " "	Abel Warren	Dec. 22, 1826

MICHILIMACKINAC COUNTY.

CHIEF.	Appointed		Appointed
Wm. H. Ruthuff	Oct. 27, 1818	Sam'l Abbott (declined)	Aug. 2, 1819
Jonathan N. Bailey	Jan. 13, 1824	Michael Dousman	Nov. 3, 1821
Samuel Abbott	Mar. 2, 1827	Robert Stuart	May 3, 1825
Samuel Abbott	Mar. 3, 1831	Michael Dousman	Mar. 2, 1827
ASSOCIATE.		Robert Stuart	" "
John Dousman	Oct. 27, 1818	Michael Dousman	Mar. 3, 1831
A. D. Stewart (declined)	" "	Robert Stuart	" "

MONROE COUNTY.

CHIEF.	Appointed.		Appointed
John Anderson	July 14, 1817	Robert Clark	Aug 6, 1824
Ephraim Adams	April 9, 1827	John B. Cicote	Feb. 27, 1827
Walter Colton	Oct. 22, 1829	James J. Godfroy	April 9, 1827
ASSOCIATE.		Riley Ingersoll	" "
Isaac Lee	July 14, 1817	Joseph G. Nevarre	Oct. 22, 1829
Francois Navarre	" " "	Lambert Couchois	July 31 1830

OAKLAND COUNTY.

CHIEF.	Appointed
William Thompson	Mar. 28, 1820
William Thompson	Dec. 28, 1826
Smith Weeks	April 9, 1827
Daniel Le Roy	Mar. 19, 1829
Daniel Le Roy	Nov. 5, 1829

ASSOCIATE.	Appointed
Amasa Bagley	Mar. 28, 1820
Daniel Bronson	" " "
Amasa Bagley	Dec. 28, 1826
Daniel Bronson	Dec. 28, 1826
Amasa Bagley	Mar. 3, 1831
Daniel Bronson	" " "

ST. CLAIR COUNTY.

CHIEF.	Appointed
James Fulton	May 12, 1821
Zephaniah W, Bunce	April 27, 1822
Mark Hopkins	July 3, 1828
John K. Smith	Nov. 5, 1829
ASSOCIATE.	
John K. Smith	May 12, 1821
Zephaniah W. Bunce	June 19, 1821

	Appointed
David Oakes	April 27, 1822
Samuel Ward	
Samuel Ward	July 3, 1828
Joseph P. Bunce	" " "
David Oakes	Nov. 5, 1829
Lewis I. Breakman	" " "
Zephaniah W. Bunce	Mar. 4, 1831
Amasa Heminger	" "

ST. JOSEPH COUNTY.

CHIEF.	Appointed
William Weeks	Nov. 5, 1829
William Weeks	Mar. 4, 1831

ASSOCIATE.	Appointed
John Sturges	Nov. 5, 1829
Luther Newton	Nov. 5, 1829
Hart L. Stewart	June 29, 1832

WAYNE COUNTY.

CHIEF.	Appointed
James Abbott	Oct. 9, 1815
John L. Leib	May 31, 1817 June 13, 1822
Wm A. Fletcher	Mar. 25, 1823 Dec. 13, 1824
Benj. F. H. Witherell,	June 17, 1824
Henry Chipman	Dec. 19, 1825
Asa M. Robinson	Dec. 28, 1826
Daniel Le Roy	Jan. 18, 1828
Melvin Dorr	June 26, 1828
John McDonell	Jan. 13, 1830 July 28, 1830 Sept. 6, 1834
ASSOCIATE.	
John R. Williams	Oct. 9, 1815
Henry I. Hunt	" "

ASSOCIATE	Appointed
John McDonell	Jan. 16, 1817
Benj. F. H. Witherell,	May 28, 1823
Philip Lecuyer	Dec. 19, 1823
Melvin Dorr	Aug. 4, 1824
Philip Lecuyer	Dec. 19, 1826
Melvin Dorr	" " "
Shubael Conant	Apl 14, 1827
Henry M. Campbell	Jan. 18, 1828
Henry M. Campbell	May 22, 1828
Peter J. Desnoyer	June 26, 1828
Orville Cook	Jan. 13, 1830 July 28, 1830
William Bartow	Jan. 14, 1830 July 28, 1830
Charles Moran	Mar. 4, 1831
Jas. Williams (declined)	" "

WASHTENAW COUNTY.

CHIEF.	Appointed
Samuel W. Dexter	Dec. 1, 1826
Samuel W. Dexter	Mar. 3, 1831
ASSOCIATE.	
Henry Rumsey	Dec. 1, 1826
Oliver Whitmore	Dec. 1, 1826
Anthony Case	Mar. 2, 1827
Oliver Whitmore	Mar. 3, 1831
Anthony Case	" " "
Oliver Whitmore	June 29, 1832

TERRITORIAL ASSOCIATE JUDGES.

Act of April 15, 1833.

BERRIEN COUNTY.	Appointed
Tolman Wheeler	April 23, 1833
Amos L. Amsden	April 23, 1833
BRANCH COUNTY.	
Silas A. Holbrook	April 23, 1833
William Kent	April 23, 1833
CALHOUN COUNTY.	
Daniel G. Garnsey	April 23, 1833
Eleazer McCamley	April 23, 1835
John V. Henry	Feb. 21, 1834
CASS COUNTY.	
Abiel Silver	April 23, 1833
William Burk	April 23, 1823
JACKSON COUNTY.	
Hiram Thompson	April 23, 1833
William R. Deland	April 23, 1833
KALAMAZOO COUNTY.	
Caleb Eldred	April 23, 1833
Rodney O. Cooley	April 23, 1833
Cyren Burdick	May 15, 1833
Cyren Burdick	Feb. 25, 1834
Joseph Vickery	June 20, 1835
HILLSDALE COUNTY.	
Lewis T. Miller	Feb. 12, 1835
Henry Stevens	Feb. 12, 1835
Daniel Thurston	Jan. 7, 1828
Daniel Thurston	May 22, 1828
Caivin Davis	Mar. 4, 1831
Daniel Thurston	Aug 1, 1832
LAPEER COUNTY.	
Norman Davison	Feb. 11, 1835
Benjamin Sleeper	Feb. 11, 1835

LENAWEE COUNTY.	Appointed
Stilman Blanchard	May 15, 1833
Alexander Tiffany	July 31, 1833
Alexander Tiffany	Feb. 25, 1834
Stilman Blanchard	Mar. 6, 1844
Joseph Rickey	Jan. 8, 1835
MACOMB COUNTY.	
William A. Burt	April 23, 1833
Willard Guyle	April 23, 1833
MONROE COUNTY.	
Salmon Keeney	July 31, 1833
Walter Colton	July 31, 1833
Salmon Keeney	Feb. 11, 1834
Walter Colton	Feb. 11, 1834
Wolcott Lawrence	Dec. 26, 1834
OAKLAND COUNTY.	
Daniel LeRoy	April 23, 1833
Amasa Bagley	April 23, 1833
SAGINAW COUNTY.	
Gardner D. Williams	Feb. 12, 1835
Andrew Ure	Feb. 12, 1835
ST. CLAIR COUNTY.	
Ralph Wadhams	April 23, 1833
Horace B. Jerome	April 23, 1833
Zeph. W. Bunce	Jan. 26, 1834
ST. JOSEPH COUNTY.	
Hart L. Stewart	April 23, 1833
William Meek	April 23, 1833
WASHTENAW COUNTY.	
Edward Mundy	April 23, 1833
Orin White	April 23, 1833

ASSOCIATE CIRCUIT JUDGES.

Act of March 26, 1836.

	Elected
ALLEGAN COUNTY.	
John Anderson	1840
John R. Kellogg	1840
John Anderson	1844
Friend Ives	1844
BARRY COUNTY.	
Nathan Barlow	1839
Isaac Otis	1839
Joseph Thomas	1846
William P. Bristol	1846
BERRIEN COUNTY.	
Edward Ballenger	1836
John M. Barbour	1836
John M. Barbour	1840
Thomas Fitzgerald	1840
Calvin Britain	1844
Henry Fuller	1844
BRANCH COUNTY.	
Martin Barnhart	1840
William A. Kent	1840
Martin Barnhart	1844
Jehiel H. Hard	1844
CALHOUN COUNTY.	
Henry Hewett	1840
Talman W. Hall	1840
Francis W. Sherman	1842
George Ketchum	1844
Horace Bidwell	1844
CASS COUNTY.	
Myron Strong	1838
Thomas T. Glenn	1840
John Barney	1840
William H. Bacon	1844
Samuel F. Anderson	1844
Milo Powell	1848
James W. Griffin	1848
CHIPPEWA COUNTY.	
Cyrus Holmes	1840
Samuel Ashman	1841
Stephen R. Wood	1842
John R. Livingston	1844
CLINTON COUNTY.	
Hiram Wilcox	1839
Joseph Sever	1839
Henry M. Starks	1846
Chandler W. Coy	1846
Joseph Sever	1848
EATON COUNTY.	
Henry A. Moyer	1848
James W. Hickoks	1848
GENESEE COUNTY.	
Jeremiah R. Smith	1840
Lyman Stow	1840
Charles N. Beacher	1844
James Kipp	1844
HILLSDALE COUNTY.	
John Pratt	1836
Heman Pratt	1836
Heman Pratt	1840
John Mickle	1840
William Mercer	1844
Daniel Kinney	1844
INGHAM COUNTY.	
Amos E. Steele	1838
Ephraim B. Danforth	1842
John R. Bowdisk	1842
Joseph Hunt	1846
Joseph E. North	1846
IONIA COUNTY.	
Samuel Dexter	1840
Erastus Yeomans	1841
Erastus Yeomans	1844
Almeran Newman	1844
Lambert B. Barnum	1848
Erastus Yeomans	1848
Erastus Yeomans	1850
Joseph Baynton	1850
JACKSON COUNTY.	
Henry A. Francisco	1840
Samuel Selden	1840
Barnabas C. Hatch	1844
Aaron T. Gorton	1844

KALAMAZOO COUNTY.

	Elected
David E. Deming	1840
Ira Rix	1840
Jacob Ramsdell	1843

LAPEER COUNTY.

James Andrews	
Sanford Kendrick	1839
James Ripp	1840
Nathaniel T. Taylor	1840
Hozial Howland	1844
Stephen S. Lord	1844

LENAWEE COUNTY.

William H. Hoeg	1838
Heman I. Quackenboss	1844
Jonathan Berry	1844

LIVINGSTON COUNTY.

Elisha W. Brockway	1837
Solomon Southerland	1837

MICHILIMACKINAC COUNTY. [Mackinac.]

Samuel Abbott	1838
Samuel Lasley	1838
Edward Biddle	1840
Michael Dousman	1840
Samuel Abbott	1848
Abraham Wendall	1848

MACOMB COUNTY.

Samuel Axford	1836
Horace Stevens	1836
Azariah Prentiss	1840
Hiron Hathaway	1840
Alexander Tackels	1844
Jacob Summers	1844
Alfred Ashley	1848
Hiram Andrews	1848

MONROE COUNTY.

Wolcott Lawrence	1836
David White	1836
Dantel S. Bacon	1837
Laurent Durocher	1840
Daniel S. Bacon	1840

OAKLAND COUNTY.

Gideon O. Whittemore	1840
David Paddock	1840
Gideon O. Whittemore	1844
Frederick H. Stevens	1844
Morgan L. Smith	1848
William Burbank	1848

OTTAWA COUNTY.

Timothy Eastman	
Jonathan H. Ford	
Saunders Coates	1839
Theodore Newall	1839
Theodore Newall	1840
Amos Norton	1840
Thomas W. White	1841

SAGINAW COUNTY.

Gardner D. Williams	1840
Elijah N. Davenport	1840
Andrew Ure	1844

SHIAWASSEE COUNTY.

Elias Comstock	1840
Joseph P. Roberts	1840
Isaac Castle	1844
Jonathan M. Hartwell	1844
George W. Slocum	1848
James Cummins	1848

ST. CLAIR COUNTY.

Zephaniah W. Bunce	1836
Edmund Carleton	1836
Edmund Carleton	1840
David Cottrell	1840
John Thorn	1844
Sargent Heath	1844
John K. Smith	1848
Silas C. McClary	1848

ST. JOSEPH COUNTY.

Melancthon Judson	1840
James B. Dunkin	1840
David Parker	1844
Melancthon Judson	1844
Abraham Wendell	1845

VAN BUREN COUNTY.

Evert B. Dyckman	1840
John R. Haynes	1840
Henry Coleman	1842
Wolcott H. Keeler	1844
Daniel Van Antwerp	1844
A. Sheldon	1850
Lyman G. Hill	1850

WASHTENAW COUNTY.

William R. Perry	1840
Caleb Clark	1840
Robert Purdy	1844
Oliver Kellogg	1844

WAYNE COUNTY.

Eli Bradshaw	1840
Robert T. Elliot	1840
Ebenezer Farnsworth	1841
Cyrus Howard	1848
Ambrose P. Young	1844

COUNTY AND "SECOND" JUDGES.

Act 92, Revised Statutes, 1846.

ALLEGAN COUNTY.

	Elected
1st. Henry H. Both	1846
Abram I. Dedrick	1850
2d. Eber Sherwood	1846

BARRY COUNTY.

1st. Hiram Greenfield	1846
2d. Elias Hill	1846

BERRIEN COUNTY.

1st. Charles Jewett	1846
Thomas Fitzgerald	1850
2d. John Cronkhite	1846
Timothy Smith	1849
Rufus Willard	1850

BRANCH COUNTY.

1st. Darwin Littlefield	1846
William A. Kent	1847
Justin Lawyer	1850
2d. Jacob Shook	1846
Jacob Shook	1850

CALHOUN COUNTY.

1st. George Woodruff	1846
George Woodruff	1850
2d. George Ketchum	1846
John S. Ellis	1850

CASS COUNTY.

1st. Joseph N. Chipman	1846
Ezekiel S. Smith	1849
Cyrus Bacon	1850
2d. Mitchell Robinson	1846
John S. Brown	1850

CHIPPEWA COUNTY.

1st. Samuel Ashman	1850
2d. J. P. Pendill, (did not qual.)	1850
Henry Acker	1851

CLINTON COUNTY.

	Elected
1st. Jesse F. Turner	1846
Jesse F. Turner	1850
2d. William Shepard	1846
William Shepard	1850

EATON COUNTY.

1st. N. S. Boothe	1846
Henry M. Munson	1848
Charles E. Beardsley	1850
2d. Amasa L. Jordan	1846
George Y. Cowen	1850

GENESEE COUNTY.

1st. Ellsworth Wakeley	1846
Ellsworth Wakeley	1850
2d. Asahel Packard	1846
Charles Seymore	1849
Ezekiel R. Ewings	1850

GRAND TRAVERSE COUNTY.

1st. Joseph Daine	1851
2d. Martin S. Wait	1851

HILLSDALE COUNTY.

1st. William T. Howell	1846
William Mercer	1850
2d. Robert Allen	1846
John Mickle	1850

HOUGHTON COUNTY.

1st. John Bacon	1846
(Dist. Judge with powers of Co. & Ct. Jd.)	
Wells Hawes	1848
William W. Pratt	1851
2d. Lyman Pray	1848

INGHAM COUNTY.

1st. Benjamin Davis	1846
Mason Branch	1850
2d. Horatio N. Forbes	1846
Orin Sharp	1850

IONIA COUNTY.

	Elected
1st. Hiram Brown	1846
Hiram Brown	1850
2d. Luke Howard	1846
Luke Howard	1850

JACKSON COUNTY.

1st. William I. Moody	1846
G. Thompson Gridley	1850
2d. Robert H. Anderson	1846
Barnabas C. Hatch	1850

KALAMAZOO COUNTY.

1st. Hezekiah G. Wells	1846
2d. Ephraim B. Delano	1846

KENT COUNTY.

1st. DeWitt C. Lawrence	1846
Leonard Bement	1850
2d. Joshua Bryer	1846
Milton C. Watkins	1850

LAPEER COUNTY.

1st. Alvin N. Hart	1846
Charles Rich	1850
2d. James Freer	1846
Horace N. Lathrop	1850

LENAWEE COUNTY.

1st. Alexander R. Tiffany	1846
Alexander R. Tiffany	1850
2d. Darius Mead	1846
Philo Wilson	1858
Amherst Crane	1850

LIVINGSTON COUNTY.

1st. Josiah Turner	1846
Josiah Turner	1850
2d. John Kenyon, jr	1846
William R. Cobb	1848
Leland Walker	1850

MACOMB COUNTY.

1st. John J. Leonard	1846
Abner C. Smith	1850
2d. Charles Marble	1846
Samuel P. Canfield	1850

MICHILIMACKINAC COUNTY.

1st. Samuel Abbott	1846
2d. Edward Guilbault	1846

MONROE COUNTY.

	Elected
1st. Hiram Stone	1846
William H. Montgomery	1850
2d. Medard Canture	1846
John Paxton, sr	1850

OAKLAND COUNTY.

1st. Charles M. Eldredge	1846
Charles M. Eldredge	1850
2d. William C. Hoyt	1846
Hiram Smith	1848
Hiram Smith	1850

OTTAWA COUNTY.

1st. Timothy Eastman	1846
Silas G. Harris	1850
2d. Henry Pennoyer	1846
Dennis W. Reed	1850

SAGINAW COUNTY.

1st. Elijah N. Davenport	1846
Reuben B. Dincard	1849
2d. William Smith	1846
Hiram Dickenson	1849

SANILAC COUNTY.

1st. Reuben B. Dimond	1849
Hiram Dickenson	1849

SHIAWASSEE COUNTY.

1st. Robert R. Thompson	1850
Anson B. Chipman	1850

ST. CLAIR COUNTY.

1st. Omer D. Conger	1850
2d. Henry Rix	1850

ST. JOSEPH COUNTY.

1st. Nathan Osborn	1846
William Sevier	1850
2d. Ch'ncy May (did not qualify)	1846
Cyrus Schellhause	1847
Cyrus Schellhause	1850

TUSCOLA COUNTY.

1st. Lovisa Hart	1850
2d. Calvin Lee	1850

VAN BUREN COUNTY.

1st. Aaron W. Broughton	1846
2d. John R. Haynes	1846
Frederick Lord	1847

WASHTENAW COUNTY.		WAYNE COUNTY.	
1st. Charles W. Lane	1846	1st. E. Smith Lee	1846
Edwin Lawrence	1850	2d. Cyrus Howard	1846
2d. Hiram Aulls	1846		
Gilbert G. Bedell	1850		

JUDGES OF RECORDER'S COURT, DETROIT.

Under the Charter of 1824, the Mayor, Recorder, and Aldermen or any three, constituted a court to try offences against city laws and ordinances, with powers of Justices of the Peace. The Recorder was Acting Mayor in that officer's absence. By law of 1846 the Mayor presided over this Court (called Mayor's Court) only when the Recorder was unable to do so. Up to 1849 Recorders were appointed by the Council; after that they were elected.

By the Charter of 1857 the Recorder's Court was given greatly enlarged powers. The salary is now $4,000. The following is a list of the Recorders:—

A. G. Whitney	1824, 1825	Ross Wilkins	1837
J. Kearsley	1826	E. S. Lee	1843
E. P. Hastings	1827	A. S. Williams	1844
B. F. H. Witherell	1828, 1840, '41, '42	James F. Joy	1848
Joseph Torrey	1829	M. J. Bacon	1849
A. S. Porter	1830, 1834	D. E. Harbaugh	1850
H. S. Cole	1831	J. H. Bagg	1851, 1852
E. A. Brush	1832, '33, '38, '45, '46, '47	G. V. N. Lothrop	1853
H. Chipman	1835	W. A. Cook	1854
A. D. Frazer	1836, 1839	W. A. Morrow	1855 to Aug. 1862

B. F. H. Witherell, (Acting) August 18, 1862 to January 16, 1864; and from May 16, 1864. to November 19, 1866.

Benjamin F. Hyde, January 16, 1864 to May 16, 1864.

George S. Swift, November 19, 1866.

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